No. 301.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951.

THE PALMER OIL CORPORATION, PAUL STERBA AND PAUL STERBA, JR., A MINOR BY AND THROUGH HIS FATHER AND NEXT FRIEND, PAUL STERBA,
APPELLANTS,

vs.

AMERADA PETROLEUM CORPORATION, ANDERSON-PRICHARD OIL CORPORATION, CITIES SERVICE OIL COMPANY, ET AL.,
APPELLEES.

APPEAL FROM THE
SUPREME COURT OF THE STATE OF OKLAHOMA

BRIEF OF APPELLANTS,
THE PALMER OIL CORPORATION, PAUL STERBA AND PAUL STERBA, JR., A MINOR, BY AND THROUGH HIS FATHER AND NEXT FRIEND, PAUL STERBA.

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KANSAS LAW PUB. CO., TOPEKA

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OPINION BELOW.

The opinions, majority and dissenting, of the Supreme Court of Oklahoma (R. 28-78) are reported in .... Okla. ...., 231 P. 2d 997.

JURISDICTION.

The judgment and decision of the Supreme Court of Oklahoma was entered on March 20, 1951. (R. 28) The finality of the judgment was stayed until June 5, 1951, by order of the Supreme Court of Oklahoma and the filing by appellants of petition for rehearing and application for leave to file second petition for rehearing. (R. 78, 116, 130) Appellants' Petition for Appeal to the Supreme Court of the United States was presented and allowed on July 30, 1951, within ninety days from the final judgment, decree and decision sought to be reviewed (R. 131, 136), and "Probable Jurisdiction" in this cause was noted by the Supreme Court of the United States on the 14th day of January, 1952.

The jurisdiction of the Supreme Court of the United States rests on 28 U. S. C. A. 1257(2). See also Rules 36, (1), 12 (1) (2) (3) (4) (5) (6), 9, and 10 (1) (2) (3) (4) (5).

INTRODUCTORY STATEMENT.

The Supreme Court of Oklahoma has sustained an Order of the Corporation Commission of Oklahoma approving a Written Plan compelling unitization of the Medrano sand bodies in the West Cement Field, in Caddo County, Oklahoma, underlying some 3,700 surface acres, such Plan being promulgated by a certain percentage of the oil and gas lease area owners within such proposed unit as provided by the Oklahoma Statute (House Bill No. 339, passed in 1945 and effective July 26, 1945,) complained of. The effect of such Compulsory Unitiza-

tion Plan is to completely dispossess each oil and gas lease owner in the unit area of its operation rights and take away the property and contract rights of the landowner lessors or royalty owners and oil and gas lease lessees. The rights of appellants Sterbas, as landowner and lessor in oil and gas lease made in 1936, and of The Palmer Oil Corporation, as lessee-assignee under said oil and gas lease on the Sterba land, were established and Palmer drilled and completed six oil and gas test wells on said leasehold prior to 1945.

QUESTION PRESENTED.

Whether House Bill No. 339 of the 1945 Oklahoma Legislature (O. S. Supp. 1949, Title 52, Sec. 286.1 to Sec. 286.17, inclusive), known as the Compulsory Unitization Act, and the Order of the Corporation Commission of Oklahoma, No. 20289, entered in Cause CD No. 1308, approving the Written Plan of Unitization of the Medrano sand bodies in the West Cement Field in Caddo County, Oklahoma, as interpreted and applied to the ownership and operations of The Palmer Oil Corporation and other appellants, under the undisputed and indisputable evidence, constitutes an improper and unreasonable exercise of the police power of the State of Oklahoma, in violation of the due process, equal protection and contract clauses of the Constitution of the United States.

STATUTES INVOLVED.

The Statutes and Orders involved are as follows:

1. House Bill No. 339 of the 1945 Oklahoma Legislature (O. S. Supp. 1949, Title 52, Sec. 286.1 to Sec. 286.17 inclusive) is printed in Appendix "A", pages 77 to 91.

2. The Order of the Corporation Commission of the State of Oklahoma, Number 20289 entered in Cause CD No. 1308, is printed in Appendix "B", pages 92 to 104.

3. The Written Plan of Compulsory Unitization is printed in Appendix "C", pages 105 to 157.

SPECIFICATION OF ERRORS.

The Supreme Court of the State of Oklahoma erred in deciding that Order No. 20289 of the Corporation Commission of Oklahoma, in Cause CD No. 1308, and the Plan of Compulsory Unitization approved thereby and the statutes (House Bill 339 of the 1945 Legislature, Title 52, Oklahoma Statutes Supplement 1949, Sections 286.1 to 286.17, both inclusive), upon which said Court determined said Order and Plan were authorized, as construed and applied to appellants by the decision and judgment of said Court under the undisputed and indisputable evidence in the record, did not deprive appellants of their property without due process of law or deny to them the equal protection of the laws in contravention of the provisions of Section I of the Fourteenth Amendment to the Constitution of the United States, and did not impair the obligation of appellants' leasehold contract in contravention of Section 10, Article I of the Constitution of the United States, because

(a) Said Order, Plan and Statutes are an unreasonable exercise of the police power.

(b) Said Order and the findings in support thereof are contrary to the undisputed and indisputable evidence in the record in that the record shows no waste of oil or gas, as defined or contemplated by the Oklahoma Conservation Statutes, was being committed, that correlative rights of producers, landowners and royalty owners in and to oil and gas were being protected and conserved in accordance with the general conservation statutes of the State of Oklahoma and the subsisting Orders of the Commission thereunder.

(c) Said Order, Plan and Statutes completely deprive appellants of their property and places it in the hands of private parties to control its management, further development and operation.

(d) Said Order, Plan and Statutes completely divest personal, property and contract rights vested and established long before the making of said Order and Plan and the enactment of said statutes.

(e) Said Statutes are too broad, vague and unspecific to constitute any reasonable guide to the Commission in making of any Order approving any Plan of Unitization thereunder.

(f) The undisputed evidence establishes that there was no single common source of supply of oil and gas, which is necessary to justify any type of oil and gas conservation statutes.

(g) Said Order, Plan and Statutes provide for and constitute more than mere regulations of the business of producing oil and gas, completely taking away from appellants their contractual rights under the oil and gas lease and their rights to possess and develop the property for oil and gas, substituting therefor merely a right to share in the proceeds arising from oil and gas production from the entire unit.

(h) Appellants, Paul Sterba and Paul Sterba, Jr., as owners of the land and royalty, are not, under the Statutes, Order or Plan of Unitization, given any voice in respect to any matter concerning the compulsory unitization.

(i) Said Statutes, Order and Plan of Unitization provide for the taking of private property not for a public use or public purposes, but for private purposes and private gain.

(j) Under said statutes percentages of private parties are authorized to decide whether a particular oil and gas field should be unitized and, if so, the type or plan of unitization, and their private decision, at their will, is submitted to the Commission for approval; if approved by the Commission, a certain percentage of private parties still have the right to completely nullify the Plan or amend the Plan, or enlarge the Plan, and in any event, control the future operations under the Plan and the winding up and closing thereof; the Commission has no right of its own to initiate the proceedings or formulate the Plan, amend

or change the Plan, or otherwise control the Plan, except its power under the general conservation laws.

(k) Said Statutes, Order and Plan provide for an unlawful delegation to private parties of the authority to determine legislative policy on any oil field within the State of Oklahoma, and particularly the West Cement Field.

(l) Said Statutes, Order and Plan of Unitization unlawfully delegate arbitrary legislative authority to certain percentages of private persons to determine the legislative policy in respect to any oil field within the State of Oklahoma, and particularly the West Cement Field.

(m) Said Statutes, Order and Plan unlawfully delegate to private parties the judicial power of determining the rights of royalty owners and minority lessees in respect to any oil field within the State of Oklahoma, and particularly the West Cement Field.

(n) Said Order and Plan unlawfully delegate arbitrary judicial and legislative power to private parties to determine the rights of royalty owners within any oil field of the State of Oklahoma, and particularly the West Cement Field.

(o) Said Statutes, Order and Plan provide for drastic changes in contractual and property rights which are not reasonably necessary to promote conservation of oil and gas or prevent waste thereof.

(p) Said Statutes, Order and Plan provide for arbitrary, unreasonable and capricious procedures and methods by which private parties determine rights of other private parties in and to any oil field of the State of Oklahoma, and particularly the West Cement Field.

(q) The Order and Plan are unreasonable, arbitrary and capricious and are not based upon the undisputed and indisputable evidence in the record.

(r) The undisputed and indisputable evidence showed conclusively that geological faults separated the Medrano Sand in the West Cement Field into several, separate common sources of supply.

STATEMENT.

This appeal is from the final judgment of the Supreme Court of Oklahoma in Cause No. 33336 and Cause No. 33708, consolidated in that Court. (R. 16)

Cause No. 33336 in the Supreme Court of Oklahoma was originally commenced as Cause CD No. 1308 before the Corporation Commission of the State of Oklahoma, hereinafter referred to as "Commission", by the filing of a petition (R. 173) on October 22, 1946, by Amerada Petroleum Corporation, Anderson-Prichard Oil Corporation, Phillips Petroleum Company, Ray Stephens, Inc., Stephens Petroleum Company and Magnolia Petroleum Company (hereinafter referred to as proponents or appellees) to enforce a compulsory unitization of all oil and gas leases and royalty or landowners' rights in an area alleged to contain the "Medrano Sand" of the

West Cement Field in Caddo County, Oklahoma, in accordance with a Written Plan prepared and submitted by said petitioners under the purported authority granted by the "Compulsory Unitization Act". (R. 173-183, 1250-1300)

The appellant, The Palmer Oil Corporation, hereinafter referred to as "Palmer", was the owner of an oil and gas leasehold within the area sought to be unitized, and the appellants, Paul Sterba and Paul Sterba, Jr., hereinafter referred to as "Sterbas", were the landowners owning the royalty rights under Palmer's said oil and gas leasehold. (Appendix "D", page 158, R. 1523-1526, 1477)

Palmer filed a written protest in Cause No. 33336 to the petition and proposed Plan of Unitization, alleging, among other things, that such compulsory unitization would contravene and violate the due process, equal protection and contract clauses of the Constitution of the United States as an improper exercise of the police power and that said Medrano Sand did not constitute a single common source of supply. (R. 255) Protests were also filed by other lessees and land owners. (R. 331, 821, 825)

Hearings were held before the Commission at various times, beginning December 9, 1946, and ending July 25, 1947. (R. 184, 201, 330, 333, 368, 430, 502, 896, 1092) The initial Plan of Compulsory Unitization was amended by its proponents on July 18, 1947, in order to give effect to a change of information or facts occasioned by the drilling and completion, on or about February 2,

1947, of Palmer's Sterba No. 7 well. (R. 1082-1088) On September 5, 1947, the Commission entered its report and Order No. 20289 granting the petition and approving the Plan of Compulsory Unitization, as amended. (R. 1239)

Palmer's oil and gas leasehold, covering 160 acres of land, was derived through an oil and gas lease executed by Paul Sterba, and other then owners of the property, as lessors, on February 18, 1936, to Chris Pearson, as lessee, who in turn assigned said lease to Gulf Oil Corporation. (R. 1523-1529) A copy of this lease is printed in Appendix "D", pages 58 to 162. On September 6, 1938, Gulf Oil Corporation assigned its rights under said lease to Palmer to a depth of 6,000 feet, retaining an overriding royalty, and by contract required Palmer to commence the drilling of an oil and gas test well on said lease and drill the same to a depth of 6,000 feet, unless oil and gas, or either of them, were found in commercial quantities at a lesser depth. (R. 1477) A copy of the assignment of the lease from Gulf Oil Corporation to Palmer is printed in Appendix "E", pages 163 to 166, and a copy of the contract between Gulf Oil Corporation and Palmer is printed in Appendix "F", pages 167 to 174.

Palmer completed its first well on this leasehold in October, 1938, which produced oil from the "Niles Sand" at a total depth of 3545 feet; completed its second well in May, 1939, which produced oil from the "Rowe Sand", at a total depth of 3401 feet; completed its third well in October, 1940, as a gas well, being the

first well on said leasehold producing from the "Medrano Sand", at a total depth of 5260 feet; completed its fourth well in June, 1943, which produced oil from the "Medrano Sand" at a total depth of 5995 feet; completed its fifth well in August, 1943, to a total depth of 6,000 feet, as a dry hole, being drilled into a fault; completed its sixth well on November 7, 1943, to a total depth of 6,425 feet, as a dry hole, having been drilled into the same fault; and on May 21, 1947, completed its seventh well, which produced oil from "Medrano Sand" at a total depth of 5,992 feet. (R. 6)

The first oil and gas test well drilled in the area known as the West Cement Field was completed on October 17, 1917, as an oil well in a producing horizon other than the "Medrano Sand". The first test well which resulted in production from the "Medrano Sand" in the West Cement Field was completed as a producer of gas in October, 1936, on land located in the next governmental section to Palmer's leasehold, and the first well producing oil from the "Medrano Sand" in said West Cement Field was discovered in March, 1943, on a quarter section adjacent to Palmer's leasehold. (R. 235, 1422)

The Compulsory Unitization Act was enacted by the 1945 Legislature of the State of Oklahoma and became effective on the 26th day of July, 1945. The Written Plan of Unitization approved by Order No. 20289 embraced 72 separate tracts (shown on Exhibit 24, R. 176, 210) of land covered by separate oil and gas leases comprising a total of 3700 surface acres. Palmer's

Sterba oil and gas lease, covering 160 surface acres, is in the approximate center of the unitized area and was estimated to have oil in place in the Medrano sand bodies thereunder of 7,880,000 barrels. (Exhibit 53, R. 1484 A, Tract No. 30-31) At the time of the entry of the Commission's Order No. 20289, on September 5, 1947, each of Palmer's Sterba Medrano sand oil wells were being allowed to produce 200 barrels of oil per day by the Commission under the General Oil and Gas Conservation Laws of the State of Oklahoma and were capable of producing such oil without waste. (R. 244, 610)

The Medrano sand bodies underlying the West Cement Field dip sharply from the Northeast to the Southwest, ranging from an approximate depth below the surface of 4,500 feet to 6,000 feet, the thickness of the sand bodies pinching out at the top of the structure but thickening at the bottom of the structure to an estimated thickness of 125 feet. The gas zone or zones are in the upper portion of the sand bodies, the oil zones are immediately below the gas zones and water below the oil zones. (Ex. 25, R. 1476-1477, 211)

The original Plan of Unitization specified or assigned the percentage of interest or ownership in the entire Unit held by each leasehold owner or owners, and the royalty owner under each lease was assigned a fraction of such ownership based upon the royalty provisions in the lease, usually a 1/8th interest. (R. 179-181) The method by which such percentage ownership was determined is not shown in the Plan itself

but was adduced in evidence on cross examination of appellees' witnesses. While Palmer's rights in the Sterba lease were to a depth of 6,000 feet, subject to Gulf Oil Corporation's overriding royalty, and while Gulf Oil Corporation had never drilled a well on such lease and no Medrano sand had been encountered in such lease at a depth below 6,000 feet through Palmer's several exploratory wells therefor thereon, the appellees in dividing the percentages assigned in the original Plan of Unitization between Palmer and Gulf divided the total 7.683% attributable as a whole to the Sterba lease, as follows:

Palmer (above 6000 feet) 5.145% 5,260,000 barrels of oil in place
Gulf (below 6,000 feet) 2.538% 2,620,000 barrels of oil in place
(R. 1486, 1487, Table 2, Tract No. 30-31, as to percentage;
R. 1484 A, Table 1, Tract No. 30-31, as to barrels of oil in place.)

While Cause No. CD 1308 was still pending before the Corporation Commission, Palmer drilled and completed its seventh well above mentioned, which established facts showing that the above percentages originally assigned to Palmer and Gulf were incorrect, because the information secured from the drilling of such well showed that there were more oil zone acre feet in the Medrano sand bodies under the Palmer-Sterba lease above the depth of 6,000 feet than had originally been estimated by appellees, the proponents of the Plan. Appellees then amended their Plan of Unitization in ac-

cordance with their interpretation of the information disclosed by Palmer's-Sterba Well No. 7, recalculating and reassigning the unit percentage under the Plan of Unitization by appellees assigned to the Palmer-Sterba lease as between Palmer and Gulf as follows:

Palmer (above 6,000 feet)	5.51614%
Gulf (below 6,000 feet)	2.15688%

(R. 1084-1088, 1492, Table 2, Tract No. 30; R. 1493, Table 2, Tract No. 31.)

The amended Plan, as approved, does not contemplate any subsequent change in the percentage of interest in the Unit owned by the various parties, even though subsequent drilling develops facts which would warrant such change. The evidence showed that prior to the filing of the petition to establish the unitization, an operator's committee was formed of which Mr. H. W. Kaveler, Phillips Petroleum Company, was chairman. The operator's committee caused to be formed a sub-committee of geologists and a sub-committee of engineers, which were referred to as "geologists' committee" and the "engineers' committee." (R. 232)

The only written report by the geologists' committee was a report made in October, 1945, identified and admitted into evidence as Exhibit 68. (R. 1414-1449, 389) A general description of the Medrano sand and its reservoir condition was given in this report as follows:

> "*Medrano Zone*—The attempt to define the stratigraphic age of the Medrano is not a consideration of this committee. For practical purposes, the top of the Medrano Zone is considered as the top of

the main body of conglomerate and or sand from sample determination and electrical logs. The base of the Medrano is placed at the base of the sand as determined in the same manner. The zone is composed of sand, conglomerate and shale.

"*Medrano Sand*—The Medrano sand is that portion of the Medrano zone composed of sand and conglomerate sand. The productive sand is that portion having sufficient porosity and permeability to form a reservoir and proven to be productive.

"*Areal Extent*—The north and northeast boundaries have been defined under the Corporation Commission Order No. 17736 as of April 10, 1945. Extension of this boundary was made to the southeast and to the northwest as shown on the maps presented with this report. Points where the sand is absent by faulting or pinch-out are shown as zero points or connected by zero lines. The Pool is limited on the south and west by water."

"STRUCTURAL INFLUENCE ON RESERVOIR

"*Faults*—The presence of a number of faults in the West Cement Medrano Pool have been proven by geologic evidence. Only those of sufficient importance to influence production have been considered and these divide the pool into five segments as shown on the map:

"The Sherritt Fault was cut by Gulf No. 3 Sherritt, 33-6N-10W.

"The Sterba Fault was cut by Phillips No. 2 Oaks, 34-6N-10W.

"Palmer No. 5 and No. 6 Sterba and Magnolia No. 2 Cement Henley, in Section 35-6N-10W.

"The Hartshorne Fault was cut by Phillips No. 1 Hartshorne in 2-5N-10W and Magnolia No. 11 Medrano and No. 10 Lindsey in 36-6N-10W.

"The Edwards Fault was cut by Magnolia No. 6 Edwards, 1-5N-10W.

"Five of the wells cited above missed the Medrano sand because of faults shortly above the zone.

"*Barriers*—The Edwards fault is believed to form a complete barrier between the production east of the fault and that west of the fault. There is no definite geologic evidence to prove or disprove communication between the other segments but it is agreed that pressure measurements indicate the lack of free communication between segments *** ." (R. 1415)

Mr. C. P. Dimit, Vice President of Phillips Petroleum Company, on March 21, 1944, wrote a letter to Petroleum Administrator for War, requesting authority for 20-acre spacing in the Medrano sand of the West Cement Field, stating among other things, as follows:

" *** it should be noted that the interpretation of the general geological features have not been changed greatly except for the now proven existence of cross faults, of which there is evidence of at least four. These cross-faults are known to exist both from pressure and stratigraphic data. Such faults have various displacements and the one traversing the S/2 of Section 35-6N-10W, is known to have a displacement of some 500 to 700 feet. The two wells drilled in the fault zone missed the Medrano sand entirely. The strike and displacement of the other three faults is not so well established but the interpretation here presented readily accounts for the difference in reservoir pressures.

The portion of the pool covered by this application is divided into four fault-segments, each of which has varying characteristics and varying degrees of ex-

ploitation. To facilitate presentation of data, these fault-segments have been designated as segments A, B, C, and D, and the limits of each shown on Exhibit A." (Ex. 92, R. 1466, 1468, 1047-1052)

The geologists' committee also prepared maps contoured on the top of the Medrano sand and on the bottom of the Medrano sand (Exhibits 54, 55, R. 1495, 1497, 318, 325) showing the gas oil contact, the water oil contact and the location of the various faults and other data. The geologists' committee also prepared sand thickness maps (Exhibits 56, 57, R. 1499, 1501, 327, 328) showing the estimated thickness of the Medrano sand in the oil zone, the estimated thickness of the Medrano sand in the gas zone, the several faults and other data. These several maps and all contours upon them were based upon information and data secured from 86 control points. (See Exhibit 54, R. 1495) being oil and gas test well holes drilled in the general area of the proposed unit. The information was secured from these various wells by way of electrical logs, core data and general production information, including the records in the office of the Corporation Commission. The core data was available on 15 of the test wells and no complete core from the top through to the bottom of the Medrano sand was ever taken from any well. Exhibit 54 was probably referred to in the evidence more than any other Exhibit and for convenience is reproduced as Appendix "G", page 175.

The geologists' committee estimated the top of the Medrano sand and the bottom of the Medrano sand at each of the control points within the Medrano sand and from this information prepared the maps above referred to, particularly the sand thickness maps (Ex. 56 and 57, R. 1499, 1501) of the Medrano sand containing oil or gas. In determining the sand thickness of the Medrano sand containing oil or gas, the Committee did not exclude shale breaks or any portions of sand having zero permeability or a low permeability. The geologists' committee also on said maps allocated to various tracts a sand thickness of the Medrano sand containing oil or gas, even though no wells were drilled upon any portion of 34 of such tracts containing a total of 1020 surface acres. (See Ex. 54, R. 1495) In some instances, tracts were allocated oil and gas in the Medrano sand, even where the wells drilled were dry holes or nominal producers. (Ex. 77, R. 1463, 909, Ex. 78, R. 1465, 919)

The top and bottom of the Medrano sand, as well as the sand thickness of the oil and gas zones of the Medrano sand at points other than control points is determined on the maps by the practice of contouring upon which no two people definitely agree. There may be differences of from 5 to 25 feet in contouring, depending upon who does it. Whether or not the contouring was correcty done materially affects the sand thickness under each tract and the participating unit factor assigned thereto. (R. 327)

The sand thickness maps were then furnished to the engineering sub-committee for the purpose of estimat-

ing the recoverable oil and gas in place and finally making the computation by which the percentage of interest in the unit was assigned to each of the separate leasehold owners and tracts. (R. 798)

The entire study and report (Ex. 71, R. 1419-1459, 553) made by the engineering committee is predicated on the existence of four geological faults dividing the Medrano Sand into five separate segments and their calculation and determination were made separately as to each segment. This engineers' report (Ex. 71) and the geologists' report (Ex. 68) are the basis of all testimony of appellee's expert witnesses.

The engineers' committee used the volumetric method of determining the estimated recoverable oil and gas in place. The procedure by which this was done can only be understood by a thorough study of Exhibit 71, and the actual calculations shown on Exhibit 53. (R. 1484A, 552-812) The calculations shown on Exhibit 53 were superseded by the calculations shown on Exhibit 53-R (R. 1490) as a result of change of facts occasioned by Palmer's drilling and completion of the Palmer-Sterba No. 7, which also caused Exhibits 54R, 55R, 56-R and 57-R to respectively supersede Exhibits 54, 55, 56 and 57. (R. 1495, 1497, 1499, 1501, 898, 901)

The engineers' committee undertook to estimate in each separate segment the amount of gas originally in place before gas was discovered and the amount of oil originally in place before oil was discovered. (R. 1425, 1450)

The sand thickness maps were used and, by surveying them with an instrument known as a planimeter, the engineers' committee estimated the acre feet of sand containing either oil or gas under each particular tract within each segment. (R. 622)

Each tract was assigned a porosity in the same amount as all other tracts within the same segment—irrespective of the actual porosity—such porosity being determined by a weighted average from the information available on the control points within that particular segment. When the factor of pressure or any other factors were used in making the estimated recoverable oil in place the same amount of factor was used for each particular tract as was used for other tracts within the same segment. (R. 1424, 505)

The isobaric map prepared by the engineers' committee, being Exhibit 72, (R. 1506, 903) showed that different pressures existed in the different segments as of November, 1945, when the pressure survey was made.

From the estimated acre feet of sand under each particular tract the original oil or gas in place under that tract was estimated. An arbitrary factor of 4% was then allowed to those tracts having their position on the lower portion of the structure allowing them a favorable gravity situation. This 4% was apportioned between such tracts on a percentage basis depending as to their location upon structure. For instance, a tract having the full benefit of gravity drainage was given 100% of the 4%, one having 50% benefit was given 50% of the 4% and so on. (R. 1484A)

The next step was to deduct from each tract the oil produced to March 1, 1946, in order to establish a definite date as of when the estimate would apply. Then the estimated recoverable oil as of March 1, 1946, was made based upon a recovery factor of 35½%. The estimated recoverable gas in place was computed by using a factor of 95%. (R. 295-299)

The recoverable gas as thus determined was assigned a value of 5¢ per thousand cubic feet and the estimated recoverable oil was assigned a value of $1.52 per barrel; the value of the recoverable oil and gas was reduced to money and therefrom a percentage calculated for each tract as to the entire unit. (R. 1484A, 303)

This percent was not the final percent of interest. The final percent of interest was determined by introducing another factor called "current income factor" based upon the oil runs from each tract during the months of May, June and July of 1946. These runs did not represent the actual potential or productivity of the wells on the tracts but rather the actual runs as allowed by the Corporation Commission. Based upon the runs mentioned each tract's current income percentage to the whole unit was computed. (R. 304, 571, 709-717)

The final calculation was to assign each tract the percent of ownership in the unit by giving the percent of the estimated recoverable oil a weight of 80% and the percent of the current income a weight of 20% and therefrom make the final computation. The 20% weight given to current income was an arbitrary figure. Witnesses for proponents stated that it was good engineering prac-

tice to use a current income factor but admitted that such factor could carry a weight as low as 15% and as much as 45% and still be within the realm of good engineering practice. (R. 884, 885, 1485, 301)

In the determination of the division of interests between the various tracts within the proposed unit no consideration was given to the comparative lifting costs involved in each of the respective tracts, nor the comparative efficiency of the respective operators, nor the comparative position of the respective operators concerning compliance with the implied covenants of their leases to properly develop the leases or drill offsets, nor comparative risks taken and expenses incurred in drilling and development.

Palmer drilled three wells which encountered the Medrano sand at a point above 6,000 feet and said wells are now producing from such sand. Palmer drilled two other wells at a depth which would have been great enough to encounter the Medrano sand, but, because of the Sterba fault, said wells found the Medrano sand absent. (Ex. 54, R. 1495)

Gulf Oil Corporation has drilled no well on the Sterba lease.

The engineers' committee in making a division of interest between Gulf Oil Corporation and Palmer merely ran a horizontal line through their estimated Medrano sand under the Palmer Sterba lease at a depth of 6,000 feet below the surface and credited Gulf with all sand lying below such horizontal line and Palmer with all sand lying above such horizontal line. (R. 596, 916)

In determining the interest as between Gulf Oil Corporation and Palmer, the engineers' committee gave no consideration to the additional risks taken by Palmer in drilling seven wells on the Sterba lease, two of which were dry, nor of its ownership or drainage rights in that portion of the Medrano sand lying below 6,000 feet, the top of which is encountered above 6,000 feet.

The interests of certain tracts of the proposed unit were arbitrarily reduced by 50% of sand thickness because of a poor quality of sand. Certain other tracts because of having current income but a low estimated recoverable oil were given an accelerated payment over a period of the first five years under the proposed unit operation, which was to be made up in the succeeding five years. (R. 1288)

While the unit plan does not so provide, proponents' witness testified and the engineers' report stated (Ex. 72, R. 1425-1426) that the intention was to close in wells producing from the gas zone of the Medrano sand, to construct a compressor plant at some location within the unit area and inject gas into the oil zone. Witnesses for appellees proposing the plan also testified that seven additional oil wells would be drilled within the oil zone but no locations for any of these wells were estabished. The estimated cost of putting the unit into operation under a gas re-cycling procedure was two million dollars. (R. 575, 610)

The evidence conclusively showed that at the time the Order was entered two-thirds of the gas energy in the Medrano sand had been exhausted, that the produc-

tion of oil and gas in the West Cement Field had been and still is under the jurisdiction of the Commission pursuant to the General Oil and Gas Conservation Statutes of the State of Oklahoma, and that Palmer had, at all times, drilled, developed and operated its said Palmer-Sterba leasehold in accordance with the best known practices and procedures and without waste and in accordance with such Conservation Statutes, and that as an operator Palmer was unexcelled. (R. 1335, 729)

The Sterbas, the landowners and owning an undivided 1/8th royalty right under the Palmer-Sterba lease, were not, under the provisions of the Compulsory Unitization Act or the Plan of Unitization, given any voting voice and did not appear in said cause before the Commission or participate therein. After Order No. 20289 of the Commission was entered September 5, 1947, Palmer filed its motion to set aside Findings of Fact made by the Commission, which was denied, and within due time Palmer perfected its appeal to the Supreme Court of Oklahoma, which was docketed there as Cause No. 33336, as aforesaid. Palmer having failed to put up the supersedeas bond as required by the Commission, the Unit operator took over the operation of Palmer's leasehold and other tracts within the Unit on December 1, 1947, and has at all times since said date been operating the same. (R. 11, 17)

In Cause No. 33708, Paul Sterba and Paul Sterba, Jr., a minor, by and through his father and next friend, Paul Sterba, and The Palmer Oil Corporation, as petitioners, filed an application direct in the Supreme Court of Okla-

homa against the Corporation Commission of Oklahoma and the Unit Operating Committee, consisting of Phillips Petroleum Company, a corporation (the Unit Operator), Amerada Petroleum Corporation, a corporation; Anderson-Prichard Oil Corporation, a corporation; Cities Service Oil Company, a corporation; Foster Petroleum Corporation, a corporation; Gulf Oil Corporation, a corporation; Magnolia Petroleum Company, a corporation; Ray Stephens, Inc., a corporation; Stephens Petroleum Company, a corporation; Sunray Oil Corporation, a corporation, as defendants, to assume original jurisdiction on petitioner's petition for a Writ of Prohibition to prohibit and restrain the defendants from enforcing the Commission's Order No. 20289, (R. 1 to 14) which application to assume original jurisdiction was sustained, docketed as Cause No. 33708 and consolidated by Order of the Supreme Court dated September 28, 1948, with Cause No. 33336. (R. 16)

The petitioners alleged in their petition that the Order No. 20289 of said Commission was invalid and in violation of the various provisions of the Constitution of the United States, heretofore referred to, and that the defendants, in their enforcement of said Order and in the operation of said Unit were, therefore, exercising unlawful judicial and legislative authority and should be prohibited and restrained in further enforcing said Order No. 20289, and from the further operation of said Unit. (R. 8 to 13)

In due time the various defendants took issue on said petition and the consolidated cause was duly presented

to the Supreme Court of Oklahoma by oral argument on April 19, 1949. Thereafter, and on March 20, 1951, the Court held that the Compulsory Unitization Statute, House Bill 339 of the 1945 Oklahoma Legislature, was valid, affirmed Order No. 20289 of the Corporation Commission in Cause No. 33336, and denied the Writ of Prohibition in Cause No. 33708. Thereafter, and in due time appellants perfected their appeal to the Supreme Court of the United States. (R. 131-153)

The Supreme Court, being advised of the repeal of House Bill 339, by Enrolled Senate Bill No. 203 enacted May 26, 1951, by both Houses of the Oklahoma Legislature, sent the case back with the requirement that the appellants, with all convenient speed, have a determination made as to the effect of such repeal on their rights. Thereupon a motion was filed in the Supreme Court of Oklahoma to withdraw its Mandate setting up the repeal of said Statutes, whereupon, the Supreme Court of Oklahoma rendered a supplemental decision, finding that the rights of appellants, once established, by said Order and Statutes, were not affected by the subsequent repeal of such Statutes. Thereafter additional record was made in this Court with such showing and the Court noted probable jurisdiction on the 14th day of January, 1952. (R. 1536-1539)

SUMMARY OF ARGUMENT.

The over-all contention of Appellants is that the provisions of House Bill No. 339 of the 1945 Oklahoma Legislature (App. "A", pps. 77 to 91) and the written Plan of Compulsory Unitization approved by Order No. 20289 of the Corporation Commission of the State of Oklahoma (App. "C", pps. 105 to 157) do not reasonably promote conservation of oil or gas and protect correlative rights within the limitations required by the due process, equal protection and contract clauses of the Constitution of the United States, and, therefore, such Statute and Plan are an improper and unreasonable exercise of the police power of the State of Oklahoma.

In this Summary, the contentions made under the specifications of error in the "Argument" portion of this brief, hereinafter set forth, may be reduced to separate sub-arguments, as follows:

(A) Neither the Statute nor the Plan of Unitization, in reality, provides for or is the action of the State of Oklahoma, but rather constitutes an unlawful delegation of authority to private persons owning designated percentages of lessees' interests in the Unit area. *Carter v. Carter Coal Co.*, 298 U. S. 238, 56 S. Ct. 855, 80 L. Ed. 1160.

While in Oklahoma its Corporation Commission is a constitutional body (Oklahoma Constitution, Article IX, Sec. 15) and under the Oklahoma General Oil and Gas Conservation Laws (Statement as to Jurisdiction, Appendix "I", pp. 226-301) it for many years has been heretofore and is now authorized to and charged with

the duty of conserving oil and gas in that State, under this Statute complained of the Corporation Commission of Oklahoma cannot itself initiate, promulgate or issue a Plan of Compulsory Unitization for any oil or gas bearing sand in any common source of supply. Under this Statute only a percent (50 percent, see Par. 286.4, Appendix "A", page 78) of private parties may determine the policy of whether a particular oil field should be unitized; having so determined, the same percentage of private parties formulate the Plan of Unitization and decide whether the Corporation Commission shall be given jurisdiction to approve or reject their Plan of Unitization; if the Commission approves the Plan of Unitization, a percentage (15 percent to nullify, Par. 286.6, Appendix "A", page 82; 10 percent to amend, Par. 286.11, Appendix "A", page 88; 50 percent to enlarge, subject to veto of 15 percent, Par. 286.12, Appendix "A", page 88) of private parties may still nullify, amend or enlarge the Plan of Unitization. If the Plan is approved, and not nullified or amended, a percentage (66⅔ per cent and 75 percent, VIII of Plan, Appendix "C", p. 116) of private parties determine by whom and in what manner the Unit shall be operated and how and when it shall be wound up and closed, with the Commission having no power to control the action of such private parties.

The Statute specifically prohibits the Commission from naming the operators of the Unit (Par. 286.5, Appendix "A", page 79) or from expressing its views on appeal in the State Supreme Court (Par. 286.7, Appendix "A", page 83).

Cases like *Wurts v. Hoagland*, 114 U. S. 606, 5 S. Ct. 1086, 29 L. Ed. 229, supporting the drainage districts principle, or *Head v. Amoskeag Manufacturing Co.*, 113 U. S. 9, 5 S. Ct. 441, 28 L. Ed. 889, supporting the mill dam acts, are not authority for the Statute and Compulsory Plan of Unitization as presented in this case. Those cases establish that where the benefits of a recognized local public improvement accrues directly to property owners within the area involved such property owners may be assessed with the expense of such improvement on condition that the majority of them want the improvement; and a fair compensation is provided when property is actually taken. Those cases are not authority for the taking of property and destruction of contract rights for the purpose of conservation, which is of general public interest where no percent or group of private parties should ever control, especially where the facts are disputed.

The Statute on its face and the Plan of Unitization approved thereunder, disclose their purpose as not being one in the pubile interest for the conservation of oil and gas and the protection of correlative rights, but to place the business of producing oil and gas in the hands and under the control of the major integrated companies as distinguished from minor independent operators, also eliminating supervision by land or royalty owners.

(B) The Statute and Plan of Unitization do not provide for equal protection of the law as between the lessors and the lessees and as between persons or parties whose rights were definitely fixed at the time the Statute was enacted. Garvin, "*The Effect of Field Unit Operation*

upon the Royalty Interest and the Royalty", 21 Okla. St. B. J. 1793, 1798, 1799 (1950).

The inequality existing between the owners of major lessee interests as distinguished from the owners of minor lessee interests resulting from the percentage provisions of the Statute and Plan has previously been mentioned. Even more unfair and unreasonable is the failure of either the Statute or Plan to provide the lessors or royalty owners the same or similar rights granted to the lessees. A lessor or royalty owner has no right to initiate or formulate a Plan of Unitization or to petition the Commission for approval thereof. The only notice of a petition to establish a Plan of Unitization provided to a royalty owner is a publication notice and even should such royalty owner or lessor appear he is not given, under the Statute or the Plan, a voting right to nullify, amend or otherwise change the Plan, or in any way to control its operation.

Appellees will no doubt contend that the interests of the lessor and lessee are the same and that the royalty owner or lessor will be amply protected by the action taken by his particular lessee. It may be true that the interests of a lessor and lessee are in some respects the same but in many instances their interests are adverse. The development of the law of implied covenants is based upon the disparity of interest as between the lessor and lessee, providing the former a remedy against the latter, where there are no express provisions present.

The discrimination between the lessor and lessee is unfair and unnecessary, will not promote but will deter

conservation of oil and gas and will prevent protection of correlative rights. The Statute and Plan for this reason are unconstitutional in failing to provide equal protection of the law. Maurice H. Merrill, a Book Review on "*A Form for An Oil and Gas Conservation Statute*", 4 Okl. Ba Rev. 272, 274, (May, 1951).

Also, the Statute excludes from its operations all oil fields twenty years of age on the effective date of the Statute and all fields that, on such effective date, are being operated under pressure maintenance or secondary recovery methods. (Par. 286.2, Appendix "A", page 77) This discrimination has no justification in fact or in law, for a field twenty years of age or one being operated under pressure maintenance may be in much more need of unitization than a new field operated on the most competitive basis. Such unequal protection of the law has been criticized (21 Okl. St. B. J. 1801, 1802 (1950)) and is sufficient to render the Statute unconstitutional.

(C) The Statute and Plan of Unitization are not mere Regulations of a business or industry but provide Laws to be made and administered at the uncontrolled discretion of private parties which unreasonably and unnecessarily destroy vested business property and contract rights of others. Palmer acquired its leasehold in 1938 under the terms of which it had the right to engage in its business of producing oil or gas and to receive a stated share of the production from said leasehold in accordance with the then existing law. The Sterbas, Palmer's lessors, have the right to enforce the express and implied covenants of the lease, including the right

to require Palmer to drill, develop and operate such leasehold in accordance with the then settled law. (*Gruger v. Phillips Petroleum Co.*, 192 Okl. 259, 262, 135 P. (2d) 485, 488 (1943); *Gibbens, "The Effect of Conservation Legislation on Implied Covenants in Oil and Gas Leases,"* 4 Okl. L. Rev. 337, 339 (1951). The Sterbas were also entitled to 1/8th of the oil and gas produced from the leasehold, which experience in the oil industry had shown was the equivalent of 7/8ths usually received by the owner of the lease for the risk and expense required of him. (*Glassmire, Oil and Gas Leases and Royalties*, Sec. Ed. Par. 16, P. 60)

Palmer had drilled six wells, two of which were dry holes, before the Statute was enacted in 1945 and completed the seventh well before the Plan of Unitization was approved. Palmer was unexcelled as an operator, complied with the covenants, express and implied, of its lease and had operated the leasehold without waste in accordance with all Rules and Regulations of the existing General Conservation Laws of Oklahoma. Without compensation for its loss on dry holes, the risk taken, its ability as an operator or its compliance with the covenants of the leasehold, Palmer, by this Statute and Plan of Unitization, has been excluded from the operation of its own premises. Its leasehold has been forced into a unit with leaseholds owned by others, its competitors, some of whom have not drilled any wells, nor complied with the terms of their leases. It is being operated with such other leases as a unit by a unit operator, chosen also by Palmer's competitors. Palmer, in

lieu of its property and rights, is assigned the passive right to receive a share of the production from the unitized area, which share was fixed in the Plan by others, Palmer's competitors, in the whole field over which Palmer has no percentage control. The Sterbas are unable to enforce the express or implied covenants of the leasehold and have, therefore, lost the right to share in 1/8th of the production from such leasehold, based upon Palmer's operation or control thereof. They are, in lieu thereof, given the right to share in the production of the whole unit over which they have no control.

The complete disregard and destruction of Palmer's and the Sterbas' property and contract rights by a retroactive law which could not have been foreseen is unfair and not reasonably necessary for the conservation of oil and gas and the protection of correlative rights. See, *Antitrust Laws et al. v. Unit Operation of Oil and Gas Pools*, P. 161, 162 (1948).

(b) The undisputed evidence discloses that the Medrano sand of the West Cement Field is traversed by several impervious geological faults of such magnitude as completely to separate said Medrano sand into several separate bodies or separate common sources of supply of oil and gas, thereby making the Statute and the Plan improper and inapplicable as a reasonable exercise of the police power of the State of Oklahoma, since correlative rights are not involved. All of the known facts concerning the Medrano sand were derived through Appellees themselves on cross examination. The entire study of the Medrano sand by the engineers' committee and

the geologists' committee is predicated on the existence of four faults dividing the sand into five separate segments. Although Appellees' witnesses expressed the vague opinion that some of the faults were not complete barriers at least in the gas zone of the Medrano sand, no witness was bold enough to deny that all known facts clearly indicated that the Sterba fault constituted a complete barrier, and Appellants' expert witnesses so testified. All authority supporting conservation statutes are in agreement that there must be a protection of correlative rights which, of course, cannot exist where several separate and distinct sources of supply are treated as one common source of supply. In other words, there is no common property. (*Ohio Oil Company v. Indiana*, 177 U. S. 190, 20 S. Ct. 576, 44 L. Ed. 729.

(E) The Order and Plan, particularly the division of interest therein, are unreasonable, arbitrary and capricious when considered in the light of the undisputed evidence.

(1) At the time the Order was entered on September 5, 1947, two-thirds of the gas reservoir energy had been exhausted. The purpose of the unitization so far as the evidence disclosed was to conserve the gas energy by repressuring through the means of a cycling plant to reinject into the Medrano sand all gas produced. With two-thirds of the gas energy exhausted it is obviously unreasonable to require a unitization entailing the destruction of property and contract rights merely to conserve the remaining one-third gas energy. Moreover, the same result is substantially obtainable under the General Conservation

Laws without such a drastic effect upon individual property and contract rights. See *Denver Producing and Refining Company v. State, et al.*, 199 Okl. 171, 184 P. (2d) 961.

(2) The Plan included within the unit considerable acreage, which was not proven to contain productive oil or gas.

(3) The method used in assigning the divisions of interest fails to include certain specific requirements of the Statute and important factors under existing legal rights.

(a) The division of interest as between Gulf Oil Corporation and Palmer was unreasonable in dividing the oil merely on the basis of a horizontal plane extended 6000 feet below the surface.

(b) The division of interest method was unreasonable in failing to include factors such as the risk and expense in drilling and development and the comparative compliance of lessees with the implied covenants under their respective leases.

(c) The division of interest method gave no consideration to the comparative efficiency of operators or the "burden of operation", although the latter factor was specifically required by the Statute.

(d) The division of interest method did not fairly include a factor of "probable productivity *** in the absence of unit operation", as required by the Statute, but assumed an arbitrary 20 percent "current income" factor based upon the production allowables in three months rather than the productive capacity of the wells.

ARGUMENT.

As previously stated, the fundamental question is whether House Bill No. 339 and the Plan of Unitization approved thereunder constitutes a reasonable exercise of the police power under the facts of this case, within the limitations required by the due process, equal protection and contract clauses of the Constitution of the United States. For purpose of clarity, the errors assigned (this Brief, pages 4 to 8) will be separately or jointly presented and argued under the contentions hereinafter set forth, prefaced by a brief history of the conservation of oil and gas under the police power, with particular emphasis on the problem of field-wide unitization, which is here involved.

I.

SAID STATUTES, ORDER AND PLAN ARE AN UNREASONABLE EXERCISE OF THE POLICE POWER. THIS GENERAL CONTENTION IS COVERED BY ASSIGNMENT OF ERROR (a). (Brief page 5)

It is conceded, as a general principle, that Regulatory Legislation designed to conserve natural resources and protect correlative rights is sustained under the police power. See *Summers Law of Oil and Gas*, Vol. 1, Sec. 106, for a good general discussion with many authorities cited. *Legal History of Conservation of Oil and Gas, A Symposium, American Bar Association, 1938;* see Annotations, *24 ALR 307, 78 ALR 34, 86 ALR 418, 86 ALR 431, 13 ALR (2d) 1095; Republic Natural Gas Company v. Oklahoma*, 334 U. S. 62, 68 S. Ct. 972, 92 L. Ed. 1212,

dissenting opinion of Mr. Justice Rutledge, at 334 U. S. 74, 92 L. Ed. 1222.

It may also be conceded that early unitization of an entire common source of supply of oil and gas and unit operation thereof, may result, over a period of time, in the greatest recovery of oil and gas therefrom, and, depending upon many other facts and circumstances, may be the most efficient and modern method known under present scientific information. *Summers Law of Oil and Gas.* Vol. 1, Sec. 104.

To make the above concessions, however, does not mean that some proposed form of unitization is better for a particular oil and gas field than to drill and develop such field under standard practices; or, that a compulsory unitization will ever be wise policy for a State to follow, except, possibly, where the facts are undisputed and no reasonable objection exists. See *Glassmire, Oil and Gas Leases and Royalties,* 2nd edition, Section 11, page 41. For instance, the compulsory unitization by the Commission under House Bill 339, of the Chitwood Spiers Sand was a miserable failure. See 21 Okl. B. J. 1796 (1950).

It is not strange that field-wide unitization was, from the beginning, promoted by representatives of or those working closely in association with the major oil company interests. The late Henry L. Doherty, being fearful of an early depletion of our oil and gas reserves, and, realizing their necessity for defense purposes, in 1924 strenuously recommended unit operations of oil and gas fields and that the same be placed under Federal control.

He was considered radical chiefly because of his recommendation of Federal control. However, his ideas of Federal control did not necessarily mean compulsory unitization.

Subsequently, the matter of fieldwide unitization was studied by such organizations as the American Petroleum Institute, American Institute of Mining and Metallurgical Engineers, the American Bar Associaton, and others. Even the Federal Government gave consideration to unit operations on Government owned land, and by Statute enacted as early as 1930, the Secretary of the Interior was authorized to approve a proposed Plan of Unitization where it was in the public interest. James A. Veasey of The Carter Oil Company, who spear-headed the study made by the American Bar Association, heartily agreed with the idea of unitization but concluded that a Statute authorizing compulsory unitization based upon the will of the majority of the operators in an area would be unconstitutional as an unreasonable delegation of authority. See *Veasey, Legislative Control of the Business of Producing Oil and Gas; Reports of the American Bar Association*, Vol. 52, page 577, 628 (1927). In 1931, W. P. Z. German, then General Attorney for Skelly Oil Company, asserted the view that the State had authority to require unit operation of oil pools. See *Compulsory Unit Operation of Oil Pools*, 17 ABAJ 393 (June, 1931). However, Mr. German was not thinking of field-wide unitization so much as he was about unitization of small areas for well spacing purposes. From 1931 to 1940 very little was said or done about unitization, except,

some academic discussions before the Section on Mineral Law of the American Bar Association, (see M. L. Hader, Carter Oil Company "*The Principles of Petroleum Engineering, Which, If Properly Understood and Applied Should Uphold the Constitutionality of Any Reasonable State Pooling Statute Designed to Conserve, Maintain, and Require the Efficient Use of the Reservoir Energy of an Oil Pool to Enlarge the Ultimate Recovery*"; Northcutt Ely "*Legal Restraints on Drilling and Production*", *Pamphlet American Bar Association, Section of Mineral Law, Annual Meeting Kansas City, 1937*, pages 25 and 45), or in Law Review Articles. See "*The Conservation of Oil,*" 51 Har. Law Rev. 1209, (1938); Ford, "*Controlling Oil Production,*" 30 Mich. L. Rev. 1170 (1932).

The fear expressed twenty-five years ago when oil and gas reserves were approximately 9,000,000,000 barrels with an annual consumption of 750,000,000 barrels of an early depletion of our natural resources of oil and gas are hardly justified in the light of subsequent developments. (*Hardwicke Antitrust Laws, et al. v. Unit Operation of Oil or Gas Pools*, Appendix 180 (1948)). Proven oil reserves in the United States as of January 1, 1952, stood at 32,000,000,000 barrels with an annual consumption of somewhat in excess of 2,000,000,000 barrels. See *The Oil and Gas Journal*, Vol. 50, No. 38, page 218, January 28, 1952.

In 1940, the Oklahoma City Wilcox Secondary Recovery Association, which was organized through the efforts of

Phillips Petroleum Company, employed counsel to draft legislation providing for compulsory field-wide unitization in Oklahoma. There was a diversity of opinion among those in the Association whether such legislation was desirable even for secondary recovery operations. A compromise draft of a Bill was finally introduced in the 1941 Oklahoma Legislature but it failed to pass. Later a Committee was formed by the Mid-Continent Oil and Gas Association to work on such legislation, and, although submitted in 1943 as House Bill 332, this Bill also failed. Then House Bill 339 was prepared and submitted to the 1945 Oklahoma Legislature, passing under the banner of fostering secondary recovery. See "*Conservation of Oil and Gas, a Legal History*", 394-403 (1948). House Bill 339 was completely repealed by Enrolled Senate Bill No. 203 enacted by the 1951 Oklahoma Legislature. This latter Bill eliminated all, except possibly one, of the constitutional objections raised by Appellants on this appeal.

This case was filed before the Corporation Commission on the 22nd day of October, 1946, and during the trial thereof, and since Order No. 20289 was entered on September 5, 1947, the major oil companies began to realize that they could not, on this matter of unitization, run roughshod over all independent producers and all royalty owners. As a consequence an extensive campaign of education on the question of unitization has been conducted. In fact, there has been more literature in the past five years on the problem of unitization than in all preceding time.

See *Myers, "Spacing, Pooling and Field-wide Unitization"*, 18 Miss. L. J. 267 (1947); *Hardwicke, "Antitrust Laws, et al. v. Unit Operations of Oil or Gas Pools* (1948); *King, "Pooling and Unitization of Oil and Gas Lease,"* 46 Mich. L. Rev. 311, (1948); *Jacobs, "Unit Operation of Oil and Gas Fields"*, 57 Yale L. J. 1205 (1948); *Conservation of Oil and Gas, a Legal History* (1948); *Merrill, "Implied Covenants, Conservation and Unitization"*, 2 Okl. L. Rev. 469 (1949); *Unit Operation at Cotton Valley: An Alleged Violation of the Sherman Act*, 24 Tulane L. Rev. 76, (1949); *"Petroleum Conservation", by American Institute of Mining and Metallurgical Engineers*, (1950); *Proceeding of First Annual Institute on Oil and Gas Law, South Western Legal Foundation, Dallas, Texas*, pages 1-96, 519, 545 (1950); *Green, "Proposed Amendments to the Unitization Law*, 21 Okl. B. J. 1793 and 1801 (Dec. 1950); *Gibbens "The Effect of Conservation Legislation on Implied Covenants in Oil and Gas Leases"*, 4 Okl. L. Rev. 337, 362, (1951); *Merrill "Implied Covenants and Secondary Recovery"*, 4 Okl. L. Rev. 177, 189 (May, 1951); *Techniques of Field Wide Unitization"*, Voorhees, 24 Rocky Mountain L. Rev. 14 (1951); *Hardwicke, "Unitization Statutes: Voluntary Action or Compulsion"*, 24 Rocky Mountain Law Rev. 29 (1951); *"Oil and Gas Production", Engineering Committee, Interstate Oil Compact Commission* (1951); *"A Form for an Oil and Gas Conservation Statute" by T. Murry Robinson, et al., Legal Committee of Interstate Oil Compact Commission* (1951).

The Proceeding of Third Annual Institute on Oil and Gas Law, South Western Legal Foundation, Dallas, Texas, (1952), was devoted entirely to the matter of unitization but the proceedings have not yet been printed.

General Regulations on any type of satisfactory unitization of an oil field require a long time and considerable experience to formulate. Even the Secretary of the Interior required more than fifteen years to work out Regulations covering unit operation of oil and gas deposits owned by the United States of America. See 12 Fed. Reg. 528:2, January 25, 1947.

House Bill No. 339 of the 1945 Oklahoma Legislature (O. S. Supp. 1949, Title 52, Sec. 286.1 to Sec. 286.17, inclusive), is the first Statute of its kind and undertakes to provide for an enforced unitization and unit operation of an entire oil and gas field. There have been City Ordinances and Statutes which have provided for the pooling of small tracts for the establishment of drilling units for the production of oil and gas which have been sustained under the police power, (see *Marrs v. City of Oxford*, CCA 8th, 1929, 32 F. (2d) 134, Cir. Denied, 280 U. S. 573, 50 S. Ct. 29, 1929; *Gant v. Oklahoma City*, 159 Okl. 86, 6 P. (2d) 1065, (1931), affirmed 289 U. S. 98, 53 S. Ct. 530, 77 L. Ed. 1059; *Patterson v. Stanolind*, 182 Okl. 155, 72 P. (2d) 83, (1938), appeal dismissed 305 U. S. 76, 59 S. Ct. 25 (1939), but it is recognized that there is a major distinction between the pooling of small tracts for a drilling unit under spacing Statutes or Regulations, and the matter of an enforced unitization of an entire oil and gas field covering a great area. A. Allen

King, *"Pooling and Unitization"*, 46 Mich. L. Rev. 311, 312, (1948).

The general question of whether House Bill No. 339 and its application by the Commission in issuing Order No. 20289 approving the Plan of Unitization, constitutes a reasonable exercise of the police power of the State of Oklahoma, is a question which involves not one but many factors and considerations. The general question is whether the means chosen (in this case the Statute, the Order of the Commission and Written Plan of Unitization) have a reasonable relationship to the ends sought (conservation and protection of correlative rights) and are not more drastic than are reasonably necessary under the facts. *Thompson v. Consolidated Gas Utilities Corp.*, 300 U. S. 55, 81 L. Ed. 510, 57 S. Ct. 190.

Generally speaking, the perplexities arising under administrative orders issued pursuant to valid conservation legislation are outlined in the opinion of *Railroad v. Rowan and Nichols Oil Company*, 310 U. S. 573, 84 L. Ed. 1368, 60 S. Ct. 1021, rehearing denied 311 U. S. 727, 85 L. Ed. 473. When the facts upon which findings are made by the administrative body in support of its Order are not before the Court, the Court must accept or assume such findings to be true. *Patterson v. Stanolind Oil and Gas Company*, 305 U. S. 376, 83 L. Ed. 231, 59 S. Ct. 25; or where the findings and Order of the administrative body are based upon conflicting facts, the Court should, as it did in the *Rowan* case, accept the findings of the administrative tribunal as conclusive. *When, however, as in this appeal, the Statute itself is*

challenged as being unconstitutional, as well as the administrative Order approving the unitization thereunder, with a claim that certain basic facts upon which the Commission based the Order were unsupported by the evidence, the Court has the right to search the record to determine whether there is any support in the evidence for the findings which give rise to the constitutional questions. See *Baltimore & Ohio Railroad Company v. United States,* 80 L. Ed. 1209, 298 U. S. 349, 56 S. Ct. 797; *Ohio Valley Water Co. v. Ben Avon,* 253 U. S. 287, 64 L. Ed. 908, 4 S. Ct. 527; *St. Joseph Stock Yards Co. v. United States,* 298 U. S. 38, 80 L. Ed. 1033, 56 S. Ct. 720; *Niemotko v. Maryland,* 95 L. Ed. 267, 340 U. S. 268, 71 S. Ct. 325.

The various considerations and the specific facts which show that House Bill No. 339 and the Plan of Unitization approved thereunder are an unreasonable exercise of the police power of the State of Oklahoma are presented and argued under the pertinent Specifications of Error in sub-divisions hereinafter set forth 2 to 6 inclusive.

II.

SAID STATUTES, ORDER AND PLAN OF UNITIZATION CONSTITUTES AN UNREASONABLE AND UNLIMITED DELEGATION OF LEGISLATIVE AND JUDICIAL POWER TO PRIVATE PARTIES OWNING DESIGNATED PERCENTAGES OF INTERESTS, DISCRIMINATING IN FAVOR OF MAJOR INTEREST OWNERS AS AGAINST MINOR INTEREST OWNERS. THIS CONTENTION IS COVERED BY ASSIGNMENT OF ERRORS (j), (k), (l), (m) AND (n). (Brief, Pages 6, 7)

The pertinent portions of House Bill No. 339 provide as follows:

Sec. 286.3. "Subject to the limitations of this Act the Corporation Commission *** is hereby vested with jurisdiction, power and authority, and it shall be its duty, to supervise the administration of this Act."

Sec. 286.4, sub-division (d). " *** To give the Commission jurisdiction hereunder, the petition shall be filed by, or with the authority of, lessees of record of fifty percent (50%) or more of the area *** sought to be unitized. The petition shall set forth *** the proposed unit area with a map *** attached, must allege *** facts required to be found by the Commission *** and shall have attached *** a recommended plan of unitization applicable to such proposed unit area and which the petitioners consider to be fair, reasonable and equitable."

Sec. 286.5, sub-division (a). " *** The designation of the operator shall be by vote of the lessees in the unit in a manner provided in the plan of unitization and not by the Commission."

Sec. 286.6. "If at any time after the filing of a petition for the creation of a unit and within sixty (60) days after the entry of an order by the Commission approving the creation of the same, lessees

of record of fifteen percent (15%) or more of the proposed unit area, if prior to the entry of the order by the Commission, or lessees of record of fifteen percent (15%) or more of the unit area as defined by the approved plan of unitization and order of the Commission, if after the entry of such order, shall file written protest with the Commission against the creation of the unit, the Commission shall vacate all action of any kind theretofore taken and dismiss the proceedings for the creation of such unit. The fact that a lessee joined in the petition seeking authority to create the unit or otherwise participated in any of the steps thereafter taken with the view of creating the same, shall not preclude such lessee from filing a protest pursuant to the provisions of this Section.

Sec. 286.7. " *** Any person aggrieved by any order of the Commission made pursuant to this Act may appeal therefrom to the Supreme Court of the State of Oklahoma *** except in any such appeal the Commission shall be impartial, inactive and shall not be represented directly or indirectly *** ."

Sec. 286.11. "In any proceeding hereunder in which an order is entered creating a unit, the Commission shall retain jurisdiction *** for the purpose of amending the plan of unitization *** Such an amendment may be made only upon the petition of lessees of record of ten percent (10%) or more of the unit area. Any amendment to a plan of unitization made pursuant hereto shall be effective prospectively only from and after the date on which the order *** shall become final."

Sec. 286.12. "The unit area of a unit may be unitized with adjoining and contiguous portions of the same common source of supply *** upon the filing of a petition therefor and after notice and hearing, in the same manner, on the same conditions, but sub-

ject to the right of lessees of record of fifteen percent (15%) or more of an existing unit area to protest, and veto such enlargement *** all as herein provided with respect to the creation of a unit in the first instance."

(Appendix "A", pages 78 to 88)

The pertinent portions of the Plan of Unitization are quoted or summarized as follows:

Section VIII provides for an Operating Committee with various powers, including the power to remove the Unit Operator and select a successor, to determine the extent of drilling operations and development to be carried on by the Unit Operator, including drilling, plugging back, reconditioning, deepening, abandonment, etc., pass upon all costs of operation, to determine from which wells unit production shall be produced, to approve the purchase, construction, location, abandonment or sale of compressor plant, gasoline plant, tank batteries, salt water disposal system or other facilities, to determine the manner of injection of gas, to appoint sub-committees, including legal, engineering, plant, etc., to approve or disapprove expenditures for technical advice, to provide for finances, and further provides:

"In all matters except the removal of a Unit Operator the vote on behalf of Lessees having at least 66⅔% of the total voting interest in the Unit shall control.

A Unit Operator may be removed only by the vote of at least 75% in interest of the Lessees other than such Unit Operator."

Section X provides that the Unit Operator is to conduct all operations, keep records, make statements on production, comply with Workmen's Compensation Laws, etc., with a right to resign upon six months' written notice, and Phillips Petroleum Company is named as the Unit Operator.

Section XV provides that nothing shall prevent the Operating Committee from abandoning or changing in whole or in part any particular method or methods of operation.

Section XXV provides that the Operating Committee can abandon the Unit when it shall determine that unit production can no longer be produced from the Unit Area in paying quantities and that upon such abandonment all rights shall revert to the separately owned tracts, which may thereafter continue to operate wells upon payment to the Unit of their salvage value; if such wells are not taken over, the Unit Operator is to salvage the same and disburse the proceeds in accordance with the assigned percentages. See Appendix "C", page 105.

The Unitization Act, the Order of the Commission and the Written Plan of Unitization, as approved, are not merely matters of delegated legislation—they also provide delegation of judicial power and authority. There is involved the legislative policy of determining whether a particular oil and gas field should be unitized, and, if so, the judicial power of determining the manner in which such field should be unitized and the interests to be assigned to the respective owners thereof.

The matter of determining policy may be legislative, but the matter of completely taking away control and property rights and substituting therefor something entirely different, even with notice to the lessees, is a judicial determination of rights. Judicial power was also exercised when it was determined that there existed a single common source of supply which could be subject to unitization. Judicial power is also exercised when the Commission determined the respective interests of Gulf Oil Corporation and Palmer to share in the Sterba oil and gas leasehold.

The legislative and judicial power delegated is not a delegation to a State Agency but is rather a delegation to private parties. These private parties have the power in the first instance to decide the policy of whether an oil and gas field should be unitized. The Commission or State Agency has no authority in this respect. When these private parties once determine, as a matter of policy, that the Medrano sand bodies of the West Cement Field should be unitized, then, as a part thereof, they also decide the manner in which it should be unitized, and what should be assigned to each party as his interest in such unit. The only power vested in the Commission is to approve or reject the unitization as recommended by private parties. (See Paragraph 286.4, Appendix "A")

The Commission has no authority to enlarge a Unit Plan, to amend, to alter or change such Plan, or to supervise operations under the Plan except at the will of private parties. The unlawfulness of this type of dele-

gation is discussed and referred to in an annotation in 3 ALR (2d) 188.

Even more vicious than the delegation to private parties is the discriminatory nature of the delegation whereby certain large percentages of lessees can control minority interests and at the same time protect themselves from any unwanted unitizations.

It is true that the Supreme Court of Oklahoma did not pass upon the validity of the 15 percent veto provision, suggesting that such provision was not in issue, (R. 44), but whether in issue or not, all of these percentage provisions in the Statute indicate the underlying purpose of providing control in the major interest owners, rather than a police regulation to promote conservation and protect correlative rights.

Any Unitization Act, the life, existence and operation of which depends upon the will of a percentage in interest of private parties therein, is, on its face, contrary to the principle of conservation in the public interest, and arbitrary and unreasonable as to those having an insufficient percentage in interest to protect their rights and views. The obvious result of such a percentage control in the oil and gas industry is the same today as it was 10 years ago when Winston P. Henry testified before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 76th Cong., 3d Sess. on H. Res. 290 and H. R. 7372 (Petroleum investigation), p. 1786, as follows:

> "Practically every major pool is either largely owned by the major integrated companies before the time of discovery, or later by the purchasing of lease

properties in those fields. For example, the great East Texas field was discovered by independent operators, but is now in the hands of major integrated companies through purchases. The same condition is true of Conroe. But other great fields, like Hastings, Friendswood, and Anahuac on the Gulf Coast of Texas, and La Fitte and Villa Platte in the Gulf Coast of Louisiana were discovered and largely dominated from inception by major oil companies.

" *** In nearly every case then, it is a fair presumption that unitized operations would be placed in the hands of major integrated companies, not only because of their domination of the larger fields, but because of their organizations and capital with which the development of a large unit could be accomplished. Independent operators would, therefore, be called on to accept minor interests. Direct control of their property would be taken away from them. They would, therefore, have no say as to how their properties would be developed, or to whom their oil would be sold, or any control over the costs of development and operations. It is a further fair assumption that the integrated company placed in control of a given pool would desire to control the supply of oil from this field for its own pipe lines and refineries, and therefore, would fix the price which is paid for the oil."

In the case of *Carter v. Carter Coal Co.*, 298 U. S. 238, 56 S. Ct. 855, 80 L. Ed. 1160, it was held that a statute which conferred upon a majority of coal operators the right to regulate the affairs of the minority of coal operators was denial of due process of law. In the opinion the Court said:

"The power conferred upon the majority is, in effect, the power to regulate the affairs of an unwilling minority. This is legislative delegation in

its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business. The record shows that the conditions of competition differ among the various localities. In some, coal dealers compete among themselves. In other localities, they also compete with the mechanical production of electrical energy and of natural gas. Some coal producers favor the code; others oppose it; and the record clearly indicates that this diversity of view arises from their conflicting and even antagonistic interests. The difference between producing coal and regulating its production is, of course, fundamental. The former is a private activity; the latter is necessarily a governmental function, since, in the very nature of things, one person may not be entrusted with the power to regulate the business of another, and especially of a competitor. And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property. The delegation is so clearly arbitrary, and so clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment, that it is unnecessary to do more than refer to decisions of this court which foreclose the question."

In the case of *Eubank v. City of Richmond*, 226 U. S. 137, 57 L. Ed. 156, an ordinance had been passed which required the committee on streets upon request of owners of 2/3rds of the abutting property to establish a building line not less than five feet or more than thirty feet from the street line. The Court held that such an ordinance was violative of due process and stated as follows:

"This we emphasize. One set of owners determines not only the extent of use, but the kind of use

which another set of owners may make of their property. In what way is the public safety, convenience, or welfare served by conferring such power? The statute and ordinance, while conferring the power on some property holders to virtually control and dispose of the property rights of others, creates no standard by which the power thus given is to be exercised; in other words, the property holders who desire and have the authority to establish the line may do so solely for their own interest, or even capriciously. Taste (for even so arbitrary a thing as taste may control) or judgment may vary in localities, indeed, in the same locality. There may be one taste or judgment of comfort or convenience on one side of a street and a different one on the other. There may be a diversity in other blocks; and, viewing them in succession, their building lines may be continuous or staggering (to adopt a word of the mechanical arts) as the interests of certain of the property owners may prompt against the interests of others. The only discretion, we have seen, which exists in the street committee or in the committee of public safety, is in the location of the line, between 5 and 30 feet. It is hard to understand how public comfort or convenience, much less public health, can be promoted by a line which may be so variously disposed."

In the case of *Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U. S. 116, 73 L. Ed. 210, a zoning ordinance provided for the right to maintain a home for aged persons within a particular district dependent upon the consent of the owners of 2/3rds of the property within 400 feet of the proposed home. The Court held this portion of the ordinance to be unconstitutional and stated:

"The section purports to give the owners of less than one-half the land within 400 feet of the pro-

posed building authority—uncontrolled by any standard or rule prescribed by legislative action—to prevent the trustee from using its land for the proposed home. The superintendent is bound by the decision or inaction of such owners. There is no provision for review under the ordinance; their failure to give consent is final. They are not bound by any official duty, but are free to withhold consent for selfish reasons or arbitrarily, and may subject the trustee to their will or caprice. Yick Wo v. Hopkins, 118 U. S. 356, 366, 368, 30 L. Ed. 220, 225, 226, 6 Sup. Ct. Rep. 1064. The delegation of power so attempted is repugnant to the due process clause of the 14th Amendment."

The matter of having percentage control by parties in interest is contrary to the principle of a police statute to conserve natural resources, and has no relation to either conservation or the protection of correlative rights.

The principle recognized in *Parker v. Brown*, 317 U. S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1943), holding that a percentage control over a marketing program when approved by a State Agency was not invalid under the Sherman Act, cannot be extended to sustain the validity of percentage control over a police statute which drastically deprives persons of property and contract rights. The case of *Currin v. Wallace*, 306 U. S. 1, 83 L. Ed. 441, 59 S. Ct. 379, involving a delegation by Congress under the "commerce" power where uniformity is not required, is not an authority for a purported police statute.

III.

SAID STATUTES, ORDER AND PLAN OF UNITIZATION DEPRIVE LANDOWNERS AND ROYALTY OWNERS OF PROPERTY RIGHTS WITHOUT DUE PROCESS AND IMPAIR THEIR CONTRACT RIGHTS, DENYING THEM EQUAL PROTECTION OF THE LAW. THIS CONENTION IS COVERED BY ASSIGNMENT OF ERROR (h). (Brief page 6)

House Bill 339 mentions the land owner or royalty owner in very few places.

Section 286.9 provides:

> "The obligation or liability of the lessee or other owners of the oil and gas rights in the several separately-owned tracts for the payment of unit expense shall at all times be several *** the unit shall have a first and prior lien upon the leasehold interest only in the unitized common source of supply (exclusive of a one-eighth (⅛) royalty interest) in and to each separately owned tract *** the interest of the lessee or other person who *** are obligated or responsible for the cost and expense of developing and operating a separately-owned tract *** shall *** be primarily responsible *** for unit expense *** and resort may be had to overriding royalties, oil and gas payments, royalty interests in excess of a one-eighth (⅛) of the production *** only in the event the owner of the interest primarily responsible fails to pay such assessment *** A one-eighth (⅛) part of the unit production allocated to each separately owned tract shall in all events be regarded as royalty to be distributed *** the royalty owners free and clear of all unit expense *** ."

Section 286.10 provides, in part:

> "Property rights, leases and other contracts, and all rights and obligations shall meet the provisions

and requirements of this Act and to any valid and applicable plan of unitization or order of the commission made and adopted pursuant hereto, but otherwise to remain in full force and effect.

The amount of the unit production allocated to each separately owned tract within the unit *** shall be distributed among or the proceeds thereof paid to the several persons entitled to share in the production for (from) such separately owned tracts in the same manner *** same proportions and *** same conditions that they would have participated and shared *** from such separately owned tract had not said unit been organized. *** ."

Section 286.17 provides, in part:

"No agreement between or among lessees or other owners of oil and gas rights *** entered into pursuant hereto *** shall be held to violate any statutes of this State prohibiting monopolies *** ."

The Plan of Unitization, as approved, makes no mention of the land or royalty owners except provisions similar to the Statute for liens for expenses which is provided under Section 11 of the Plan.

No one would deny that under the Statute and the Plan of Unitization approved thereunder, the royalty owners had been deprived of substantial contract and property rights. It is true that some royalty owners appeared in the proceedings before the Commission (not the Sterbas) in an effort to protect their rights and on appeal are here as Appellants in Cause 302. However, under no provision of the Unitization Act are the land or royalty owners made necessary parties to the proceedings, nor is there any provision in the Unitization

Act for actual notice to them of the pendency of such proceedings. Although a general publication notice was given (R. 184, 200) it is doubtful whether such notice is sufficient under the due process clause of the Federal Constitution. See *Mullane v. Central Hanover Bank and Trust Company*, 339 U. S. 306, 70 S. Ct. 657, 94 L. Ed. 865.

In addition to this lack of actual or sufficient notice, there is no provision in the Statute giving the land and royalty owners the same or similar rights which are given to lessees, (percentagewise, or otherwise). As a matter of fact, the land and royalty owners are given no rights whatsoever under the provisions of the statute, which constitutes an unfair and unreasonable discrimination against them. No land or royalty owner or any percentage of them have the right to petition for, formulate or recommend a Plan of Unitization under the Statute. No land or royalty owner has the right to nullify, amend or enlarge a Plan of Unitization, or in any manner control or supervise the operation or final dissolution of any Plan which may be approved.

The rights of land and royalty owners under oil and gas leases have, for many years, been recognized under the laws and judicial decisions of Oklahoma and other States. The royalty owner usually, as in this case, has the right to one-eighth of the oil and gas produced, free and clear of cost of production, and the lessee owns 7/8ths, subject to the cost and expense of production, and, possibly further subject to overriding royalty, as in this case, is vested in Gulf Oil Corporation. The landowners and royalty owners under repeated judicial de-

cisions are entitled to compel their lessees to comply with all express and implied covenants of the oil and gas lease. The express covenants, of course, are contained within the terms and provisions of the lease (see Appendix "D", page 158, but the implied covenants have been developed by judicial decisions in recognition of the disparity of interests existing between the royalty owner and the lessee. See Merrill, "*Covenants Implied in Oil and Gas Leases*", (2d Ed., Sec. 15, (1940)). These implied covenants cover the duties of the lessee to reasonably explore, develop and operate the leasehold, including the marketing of the products produced therefrom. When, under House Bill 339, the royalty owners have no right to petition for unitization, formulate, enlarge, amend or otherwise control the operation of the Unit, there is a clear discrimination which has no relation to the conservation of oil and gas and militates against the principle of protecting correlative rights.

It is recognized in the oil industry that the customary one-eighth royalty which is free and clear of the cost of development and operation is substantially of the same value as the seven-eighths working interest burdened with the costs of development and operation in accordance with the established law. See *Glassmire, Oil and Gas Leases and Royalties,* 2d Ed., Sec. 16, page 60. If it is considered that unitization is a more efficient operation which will result in a greater ultimate recovery of oil at a less cost, the land and royalty owners, as well as the lessees, should share in the benefits thereof, which would necessitate an increase in the cus-

tomary one-eighth royalty or provide for some other form of compensation. See *Merrill, "Stabilization of the Oil and Gas Industry and Due Process of Law,* 3 S. Cal. L. Rev. 396, 408 (1930).

The Appellees will attempt to justify this inequality between land owners or royalty owners and lessees on the grounds that the lessees will fairly represent the rights of lessors, and, therefore, will be equally protected with the lessees. It is true that the landowners and the royalty owners have some interests in common with the lessees, but their interests are many times adverse and conflicting and they cannot safely expect to be protected by their lessees, or even by a disinterested Commission. See *Merrill, "Implied Covenants and Secondary Recovery,* 4 Okl. L. Rev. 177, 196, 198 (1951). It is also to be noted that the Statute (Sec. 286.2, Appendix "A", page 77) discriminates against those pools which, on the effective date, were being operated under pressure maintenance, or which are twenty years of age at the time of the effective date of such Statute. This discrimination has no relationship to conservation or the protection of correlative rights. See 21 Okl. Bar Journal 1802.

IV.

SAID STATUTES, ORDER AND PLAN ARE NOT MERE REGULATIONS BUT IN FACT CONSTITUTE LAWS ADMINISTERED BY THE UNCONTROLLED DISCRETION OF PRIVATE PARTIES WHICH DRASTICALLY AND UNREASONABLY DESTROY VESTED PROPERTY AND CONTRACT RIGHTS. THIS CONTENTION IS COVERED BY ASSIGNMENT OF ERRORS (b), (c), (d), (e), (g). (i) and (o). (Brief pages 5, 6, 7)

The pertinent portions of House Bill 339, provide as follows:

> Sec. 286.8. "From and after the effective date of an Order of the Commission approving the creation of a unit and approving the plan of unitization *** the drilling of any well into or the operation of any well producing from the common source of supply *** by persons other than the unit *** shall be unlawful and is hereby prohibited *** ."
>
> Sec. 286.10. "Property rights, leases and other contracts and all rights and obligations shall meet the provisions and requirements of this Act and to any valid and applicable Plan of unitization or order of the Commission made and adopted pursuant hereto *** ."

The pertinent portions of the Plan of Unitization provide as follows:

> Par. XX. "The unit shall have a servitude and right of way on, over and across all of the lands in the Unit Area for the purpose of laying, constructing, building, using and maintaining, operating, changing, repairing and removing pipe lines, tanks, telegraph and telephone lines, water lines and other facilities for the development and operation of the Unit Area for Oil and Gas and for the gathering, handling and disposal of the Unit Production; ***

Par. VI. "The adoption of this Plan *** and the creation of the Unit *** shall have the effect of unitizing all further development and operations for the production of oil and gas from the Unit Area and of pooling and unitizing the production so obtained *** as if the Unit Area had been included in a single lease and all rights thereunder owned by the lessees in undivided interests. Property rights, leases, contracts and all other rights and obligations in respect to the oil and gas leases in and to the several Separately Owned Tracts within the Unit Area are hereby amended and modified to the extent necessary to make the same conform to the provisions and requirements of this Plan. *** The relationship between lessees *** shall not be that of a trust, partnership or association but shall be in the nature of the tenancy in common. *** the unit production allocated to each separately owned tract and only that amount, regardless of the well or wells in the Unit Area from which it may be produced *** and whether it be more or less than the amount of production from the well or wells *** on any such separately owned tract shall, for all intents, uses and purposes, be regarded and considered as production from such separately owned tract. Operations carried on under *** this Plan shall be regarded *** as a fulfillment of and compliance with all provisions, covenants *** express or implied, of the several oil and gas mining leases within the Unit Area or other contracts pertaining to the development thereof, to the same extent that the development and operation of and the production of Oil and Gas from each of the several separately owned tracts within the Unit Area would have constituted a fulfillment of and compliance with such leases and contract. Wells drilled or operated on any part of the Unit Area *** shall for all purposes be regarded as wells drilled on each separately owned tract *** ."

There is no doubt that conservation of oil and gas is a wise policy and that under the police power of a State great latitude exists for the enactment of legislation to promote conservation, but there are limitations beyond which the State cannot go without encroaching upon the Federal Constitution. *Penn Coal Co. v. Mahon*, 260 U. S. 393, 43 S. Ct. 158, 676 L. Ed. 322. House Bill No. 339, Order of the Commission No. 20289, and the Written Plan of Unitization as approved thereunder, under the facts of this case, go much further than is reasonably necessary for the purpose of conserving oil or gas or protecting correlative rights, and in fact destroy contract and property rights without compensation.

It is said in *Summers, Law of Oil and Gas*, Vol. 1, Sec. 106, p. 304, as follows:

> "With the most modern scientific methods of locating earth structures, it is impossible now, as it was in the beginning of the oil and gas industry, for anyone to know, prior to actual drilling and production, of the existence and amount of oil or gas within or capable of being produced from a particular tract of land. This fact makes it unwise from the view point of either the landowner or the producer to sell the oil and gas or the privilege of producing it for a present cash consideration."

In this case, Palmer's and Sterbas' property and contracts are taken from them for a consideration fixed by private parties without even an appraisement being made by disinterested parties. Even where property is taken for condemnation for public purposes, an orderly and judicial procedure is required whereby the property

owner receives "just compensation". It must be assumed that neither Palmer nor Sterbas would have sold their rights under the leasehold to Phillips Petroleum Company or the Operating Committee at any price, or, if at any price, they would have the right to fix that price or at least negotiate for the consideration. The least that the Statute could have done in fairness to Palmer and Sterbas, and others similarly situated, would have been to make it possible for them to sell their entire interest to the Unit Operator, or the Operating Committee at a consideration to be fairly determined in a judicial proceeding rather than to turn over the operation of the leasehold to such parties merely for an assigned percent in future production from the Unit. Even where the State takes property for public purposes, it cannot fix the value of the property taken. That value must be determined in an orderly judicial procedure.

The impact of the Commission's Order 20289 approving the Written Plan of Unitization is to take from Palmer and give to private parties the operation of Palmer's oil and gas leasehold estate, such private parties, without Palmer's consent and over its objections, determining the interest to which Palmer will be entitled, thus putting Palmer, an independent oil producer, off its property and completely out of business in the field involved.

The impact of Order 20289 approving the Written Plan of Unitization for the Sterbas is to completely abrogate the oil and gas lease contract, destroying Sterbas' right

to have Palmer operate their lease and the right to compel performance of the lessee's contractual obligations, express and implied, under the lease without having participated in the proceedings before the Commission.

The property and contract rights of Sterbas and Palmer are fixed under the terms of the oil and gas lease dated February 13, 1936, and these parties had respected those rights and conformed thereto. Palmer had drilled and operated said leasehold in accordance with those rights, until the Order of the Commission of September 5, 1947, about ten years subsequent to the time that their rights were vested and established. It is one thing to have rights disturbed under provisions of a law existing at the time such rights are created; it is quite another thing to undertake a business enterprise or make a contract upon legal rights as they exist and at a subsequent time, by a law administered by the uncontrolled discretion of private parties and a Commission's Order approving the same, have those contract and property rights annihilated over one's objection. See *Merrill, Stabilization of The Oil Industry and Due Process of Law*, 3 S. Cal. L. Rev. 396, 409-410 (1930).

That Paragraphs 286.4 and 286.5 (Appendix "A", pp. 78, 79) of the Unitization Act are too vague, broad and unspecific to provide any reasonable guide to the Commission in approving any Order thereunder, was clearly shown by the fact that the Commission in its order was unable to be more specific or definite than the law itself, and the Plan of Unitization likewise was not positive or definite in purpose, time or manner of unitization, leav-

ing all of these matters within the uncontrolled discretion of the vote of 66 2/3 percent of lessees within the unit area. See annotation, 70 *L. Ed.* 322.

The so-called facts required to be found under Section 286.4 of the Unitization Act, after a finding of which the Commission is required to enter an order approving the Unit, are not facts in any sense of the word, but are merely generalities which could not operate as standards or guides for any specific Plan of Unitization.

V.

THE UNDISPUTED EVIDENCE ESTABLISHED THAT GEOLOGICAL FAULTS SEPARATED THE MEDRANO SAND INTO SEVERAL SEPARATE AND DISTINCT COMMON SOURCES OF SUPPLY. THIS CONTENTION IS COVERED BY ASSIGNMENT OF ERRORS (f) AND (r). (Brief pages 5, 8)

The pertinent portions of House Bill 339 are as follows:

> Sec. 286.2. "This Act shall apply only to common sources of supply of oil, oil and gas, or gas distillate in this State *** ."
>
> Sec. 286.5. " *** Each unit and unit area shall be limited to all or a portion of a single common source of supply. Only so much of a common source of supply as has reasonably been defined by actual drilling operations may be so included within the unit area *** ."

Irrespective of the specific requirements of House Bill 339 above quoted, it would not be a proper exercise of the police power to unitize several separate and distinct common sources of supply as one unit on the theory of

conservation and the protection of correlative rights, since the protection of correlative rights could not be reasonably provided for in such a unit. See *H. F. Wilcox Oil and Gas Company v. State,* 162 Okl. 89, 19 P. (2d) 37. That faults can and do constitute impervious barriers sufficient to separate a homogeneous sand dividing it into several common sources of supply is well demonstrated by the *Wilcox* case above referred to which involved several common sources of supply caused by faults in the Wilcox and other sands in the Oklahoma City Field.

The finding of the Commission that the Medrano sand of the West Cement Field constitutes a single common source of supply is wholly unsupported by the evidence. All of the known facts adduced in evidence disclosed that the Medrano sand of the West Cement Field is traversed by several impervious geological faults of such magnitude as to completely separate said sand into several separate and distinct sand bodies or separate common sources of supply. The conclusive nature of the evidence is demonstrated by the fact that it was, in its most important aspects, adduced by way of cross examination of appellees' witnesses proposing the Plan of Unitization. (R. 325-328, 389, 553-555, 903)

There was introduced into evidence as Exhibit 92, (R. 1047-1052), a letter written by C. P. Dimit, Vice-President of Phillips Petroleum Company, under date of March 21, 1944, to the Petroleum Administrator of War, the nature of which was to state almost positively that there were impervious barriers in the Medrano sand

caused by geological faults. (R. 1466-1477) The substance of this letter was never denied.

The engineers' committee report, Exhibit 71, is predicated upon the existence of five separate and distinct common sources of supply or segments, each of which has different characteristics and values. The only specific comment that the report of the engineers' committee made with respect to the faults is on page 4 thereof, which states:

> "Transverse faults divide the pool into five segments herein designated as segments a, b, c, d, and e, lettered from east to west."

The report of the engineers' committee considers all pertinent engineering factors, not from the standpoint of all Medrano sand bodies constituting one common source of supply, but as those factors relate to each separate segment of the Medrano sand bodies. All estimates, computations and calculations were separately made with reference to the information and characteristics of the sand conditions as existing in each of the separate segments. A more eloquent statement that the Medrano sand bodies of the West Cement Field constitute several common sources of supply can hardly be conceived of than that disclosed by Exhibit 71; (R. 1419-1460) and this conclusion is confirmed by the silent acquiescence of every member of the engineers' committee by their failing to explain the segment treatment given in their report. The Isobaric Map, Exhibit 72, R. 1506, 903, prepared by the engineers' committee in

1945, definitely showed pressure variances between each of the separate segments.

The only written geological report ever made by the geologists' committee, was introduced into evidence as Exhibit 68 (R. 1414-1449, 389) which was made in October, 1945. This report states that the committee concluded that the Edwards fault constituted a complete barrier and that there was lack of free communication between the several fault segments. All exhibits prepared by the geologists' committee, including 54 (R. 1495, 318), 55 (R. 1497, 325), 56 (R. 1499, 327), 57 (R. 1501, 328) and similar exhibits 54R (R. 1495, 899-90), 55R (R. 1497), 56R (R. 1499) and 57R, (R. 1501), which superseded the same, showed these various faults without limitations. For instance, on Exhibit 54 (R. 1495) the minus 4600 contour line on the left side of the Sterba fault meets the Sterba fault line at a point more than 350 feet from the point where the minus 4600 contour line on the right side of the Sterba fault meets the Sterba fault line, thus showing a complete separation of the oil zone in the Medrano sand. These contours were established from the actual information obtained from the Palmer-Sterba No. 6 dry hole. On the same exhibit the minus 3400 contour on the left side of the Sterba fault meets the Sterba fault line at a point more than 600 feet from the point where the minus 3400 contour line on the right side of the Sterba fault reaches the Sterba fault line, showing a vertical separation of approximately 600 feet between the Medrano sand on one side of the fault from the Medrano sand on the other side of the

fault. A minus 2900 foot contour on the left side of the Sterba fault meets the Sterba fault line at almost the same point where the minus 3100 foot contour line on the right side of the fault makes a 200 foot displacement in the Medrano sand on either side of the fault. These contours were established by the actual facts secured from Palmer-Sterba No. 5 dry hole and Magnolia-Henley No. 2 dry hole. The actual known facts establish, therefore, that the Sterba fault completely separates the Medrano sand into at least two common sources of supply and these known facts are reflected on Exhibit 54. (R. 1495) Various exhibits, prepared by Appellants, which were based upon Exhibits prepared by Appellees, including Exhibits 65 (R. 1503, 389), Exhibit 66 (R. 1504, 389) and Exhibit 67 (R. 1505, 389) show clearly that the Medrano sand was completely separated by the Sterba fault and Appellants' expert witnesses so testified. The only evidence in the record (which is not competent evidence) was the unfounded expert opinions of H. D. Kaveler and A. J. Montgomery, both employees of Phillips Petroleum Company, and witnesses for Appellees, and Exhibits 12 to 23, both inclusive, (R. 1345-1401), which were copies of previous orders made by the Commission under the General Conservation Law. Mr. Kaveler and Mr. Montgomery both admitted that faults completely separated the oil zone of the Medrano Sand, but disregard d the known facts upon which their expert opinions were purportedly based, and expressed the further opinion that somewhere in the gas zone these faults lost their effectiveness. (R. 732) An expert's

opinion cannot be accepted as competent evidence where inconsistent with the known facts upon which such opinion is based. *First National Bank v. Texas*, 20 Wall (U. S.) 72, 22 L. Ed. 295. The rule was applied in the case of *Myers, et al v. Shell Petroleum Company*, 153 K. 287, 110 P. (2d) 810, involving an action for damages for drainage in an oil and gas pool—a pool in Kansas quite similar in nature to the Medrano sand of the West Cement Field. Expert witnesses testified as to the porosity, permeability, pressure, etc., based upon factual information obtained from wells or control points approximately one-half mile from the point in question. The Supreme Court of Kansas held that expert opinions of this nature were nothing more than mere conjecture and the Court stated in paragraph 7 of the syllabus as follows:

> "In order to render expert opinion testimony sufficient, when tested by demurrer, it is necessary that the opinion be based upon facts sufficiently definite and certain to relieve the jury from reaching an arbitrary conclusion."

Referring to Exhibits 12 to 23, both inclusive (R. 1345-1401) the issue in those proceedings was proration under the General Conservation Laws. Those orders cannot be considered as evidence against Appellants in these proceedings where the basic fact is whether a single common source of supply exists. Be that as it may, the Commission never treated its previous orders with respect to the Medrano Sand as constituting a binding determination at any time. In each order, as will be

disclosed by a careful examination of Exhibits 12 to 23, inclusive, the Commission undertook to decide the question of single common sources of supply upon the evidence presented at each such time. It does not appear that the Commission was ever furnished, prior to these unitization hearings with evidence showing the nature and extent of the faults existing in the Medrano sand of the West Cement Field.

The decision of the Supreme Court of Oklahoma to the effect that the Commission's finding was conclusive being based upon conflicting expert opinion is indicative that the Supreme Court of Okahoma did not carefully examine the facts upon which the opinions were based but merely accepted the findings of the Commission as prima facie correct.

VI.

SAID ORDER AND PLAN, WITH ITS DIVISION OF INTEREST THEREIN ARE UNREASONABLE, ARBITRARY AND CAPRICIOUS IN THE LIGHT OF THE UNDISPUTED EVIDENCE. THIS IS COVERED BY ASSIGNMENT OF ERRORS (p) AND (q). (Brief page 8)

(1) The evidence disclosed that at the time the Order was entered two-thirds of the gas reservoir energy had been produced and expended. The operation of the compulsory unit contemplated the future drilling of approximately seven oil wells at uncertain locations; that certain gas wells would be shut in and any gas thereafter produced would be reinjected in the Medrano sand bodies. Since Appellees' pronounced purpose of this unitization is to conserve the gas energy, it is perfectly obvious that

the Unit, to be successful, should have been established before two-thirds of the gas energy has been expended. ("Petroleum Conservation", page 216, (1950)). Gas in the Medrano sand was first discovered in 1936. By the time oil was discovered in 1943, more than one-third of the total gas reservoir energy had been exhausted and by the time Order No. 20289 was entered more than two-thirds of the gas energy had been exhausted. (R. 609) This depletion of gas was largely the result of the operations of those who now propose compulsory unitization. Any compulsory unitization predicated on reinjection of gas where the gas energy is more than two-thirds exhausted, which at the same time destroys contract and property rights, has no reasonable basis. General conservation laws in Oklahoma already existing were amply sufficient to provide protection to the remaining one-third gas energy in the Medrano sand. See *Denver Producing and Refining Company v. State, et al.*, 199 Okl. 171, 184 P. (2d) 961.

(2) The Plan includes within the Unit considerable acreage not proven to contain productive oil or gas.

Thirty-four tracts of land upon which no well had been drilled (see Exhibit 24, R. 173, 210) were assigned interests and included within the Unit. There was also included within the Unit several tracts of land upon which completed wells to the Medrano sand thereon had established that such tracts were unable to produce oil and gas in commercial quantities. These tracts, undrilled and dry, constituted approximately 1020 surface acres. Under the established law, where no wells are drilled, or,

where the wells drilled result in dry holes, the tracts are valueless for oil and gas purposes; nevertheless, these tracts were included within the unit which was unfair to the other tracts proven by actual production.

(3) The chief objection to the basis of the division of interest is that it fails to include any consideration whatsoever of existing legal rights of the parties under established law and the leasehold contracts. It was clearly deficient in the following respects:

(a) Under the established law Palmer has the right to produce all oil from any well completed above 6000 feet on the Palmer-Sterba lease. This right included the right to produce all oil from any well completed at a depth of 6000 feet or above, whether such oil came from below or above 6000 feet. Palmer had two oil wells so completed. Although Gulf may have the right to produce from wells completed below a depth of 6000 feet, it never exercised this right by drilling such wells and, therefore, under the law had not established any right to produce oil from the Sterba lease. Nevertheless, Gulf's interest was determined by Appellees by running a horizontal plane at the depth of 6000 feet on the Palmer-Sterba lease and allowing Gulf all oil estimated to be in place below the depth of such plane.

(b) Palmer had, over a period of approximately ten years prior to the institution of this proceeding before the Commission, assumed the dry hole risk in the drilling of its several oil and gas test wells on the Sterba lease, two of which proved to be dry holes. The extent of this risk and expense on wells drilled to the depth

of approximately 6000 feet is a factor of great importance to one engaged in the oil and gas business as an independent operator. In the fixing of interests to the respective leases in the Plan, Palmer is given no consideration whatsoever for its risk and expense undertaken and incurred. Under the established law relating to a lessee's compliance with drilling obligations, express or implied, under an oil and gas lease the assumption of these risks and expenses would have had great weight in determining whether or not Palmer had complied with its duties and obligations to its lessors, the Sterbas.

(c) Palmer was admittedly an efficient (R. 729) operator and had fully complied with all of the express and implied covenants of its leasehold. Palmer received no consideration for these commendable qualities. No consideration was given to comparative lifting costs as between leases in the Unit, although the Statute specifically required that "burden of operation" be considered in determining the division of interest.

(d) The basis for the division of interest in the Plan also included unreasonable and arbitrary considerations, such as estimating acre feet of sand on the basis of contouring, which was mere guess-work, (R. 327), using uncertain recovery factors (R. 561, 562), and using an indefinite "current income" factor based upon allowable oil and gas runs rather than actual productive capacity of wells. (R. 708, 71)

CONCLUSION.

On May 26, 1951, prior to the time that the judgment and decision of the Supreme Court of Oklahoma became final in this Cause, House Bill 339, 1945 Oklahoma Legislature, was repealed by Senate Bill 203 of the 1951 Oklahoma Legislature. Thereupon, the Supreme Court of the United States required a decision by a Court of proper jurisdiction in Oklahoma on the effect of such repeal upon Appellants' rights in this cause. By additional proceedings in the Supreme Court of Oklahoma, a decision on this question was made under date of December 5, 1951, (R. 1536-1538) holding that Appellants' rights were not affected by such repeal.

Although the Supreme Court of Oklahoma in a sense minimized the extent of the repeal of House Bill 339, an examination of the repealing Statute, (Senate Bill 203; see Statement as to Jurisdiction, Appendices J, page 302) clearly discloses that it substantially enlarges the jurisdiction of the Corporation Commission of Oklahoma and eliminates many features of House Bill 339 that are objectionable under the Federal Constitution. In essence, Senate Bill 203 constitutes a new and different type of Unitization Statute.

Section 2 of the new Act vests in the Commission a broad jurisdiction. Section 3 permits the filing of a petition by anyone, including the Commission, with a recommended Plan of Unitization for any pool or field. All percentage provisions in respect to the amendment, enlargement or nullification of a Plan of Unitization have been completely eliminated, except the condition requir-

ing ratification of the Plan by sixty-three percent of the lease and royalty owners by unit area under Section 5. There is no discrimination between the landowner or royalty owner and lessees and the only percentage provision remaining in the Statute is that above referred to in Section 5 thereof.

The passage of this new Act and the repeal of the old Act complained of indicate legislative questioning of the fairness, constitutionality and separability of the provisions of House Bill No. 339 here objected to.

The Appellants in this case have been forced into a Unit under a Plan of Unitization pursuant to a Statute which no longer exists. The Statute and Plan are unconstitutional. It is requested that the Supreme Court of the United States adjudge that House Bill 339 of the Oklahoma Legislature and the Plan of Unitization were unconstitutional in their entirety and reverse the decision and judgment of the Supreme Court of Oklahoma entered March 20, 1951.

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of Wichita, Kansas;
CHARLES E. JONES,
of Wichita, Kansas;
COLEMAN HAYES,
of Oklahoma City, Oklahoma;
Counsel for Appellants.

APPENDIX "A"

HOUSE BILL NO. 339 OF THE 1945 OKLAHOMA LEGISLATURE

UNITIZED MANAGEMENT OF COMMON SOURCES OF SUPPLY (NEW)

Par. 286.1. LEGISLATIVE DECLARATION.—The Legislature finds and determines that it is desirable and necessary, under the circumstances and for the purposes hereinafter set out, to authorize and provide for unitized management, operation and further development of the oil and gas properties to which this Act[1] is applicable, to the end that a greater ultimate recovery of oil and gas may be had therefrom, waste prevented, and the correlative rights of the owners in a fuller and more beneficial enjoyment of the oil and gas rights, protected. Laws 1945, p. 162, Par. 1.

Par. 286.2. COMMON SOURCES OF SUPPLY TO WHICH ACT IS APPLICABLE.—This Act[1] shall apply only to common sources of supply of oil, oil and gas, or gas distillate in this State.

The provisions of this Act shall not apply to any common source of supply of oil, oil and gas, or gas distillate or any part or parts thereof which at the effective date of this Act are being operated by or under pressure maintenance, repressuring, or secondary recovery methods or operations, provided, that nothing contained in this Act shall prevent the voluntary inclusion and extension of areas in which are located such existing pressure maintenance, repressuring, or secondary recovery methods or operations as unit areas under the provisions of this Act. Provided this Act shall not apply to any field where the discovery well has been drilled twenty (20) years

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[1]Sections 286.1-286.17 of this title. Approved April 19, 1945. Effective 90 days after April 26, 1945, date of adjournment.

prior to the effective date of this Act. Laws 1945, p. 162, Par. 2.

Par. 286.3. JURISDICTION OF CORPORATION COMMISSION.—Subject to the limitations of this Act[1] the Corporation Commission of the State of Oklahoma, hereinafter referred to as the "Commission", is hereby vested with jurisdiction, power and authority, and it shall be its duty, to supervise the administration of this Act. Laws 1945, p. 163, Par. 3.

Par. 286.4. THE PETITION FOR AND ORDER CREATING UNIT.—If upon the filing of a petition therefor and after notice and hearing, all in the form and manner and in accordance with the procedure and requirements hereinafter provided the Commission shall find (a) that the unitized management, operation and further development of a common source of supply of oil and gas or portion thereof is reasonably necessary in order to effectively carry on pressure-maintenance or repressuring operations, cycling operations, water flooding operations, or any combination thereof, or any other form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from the common source of supply; and (b) that one or more of said unitized methods of operation as applied to such common source of supply or portion thereof are feasible, will prevent waste and will with reasonable probability result in the increased recovery of substantially more oil and gas from the common source of supply than would otherwise be recovered; and (c) that the estimated additional cost, if any, of conducting such operations will not exceed the value of the additional oil and gas so recovered; and (d) that such unitization and adoption of one or more of such unitized methods of operation is for the common good and will result in the general advantage of the owners of the oil and gas rights within the common source of supply or portion thereof directly affected, it shall make a finding to that effect and

[1]Sections 286.1-286.17 of this title.

enter an order approving the creation of a unit composed of the lessees and other persons who under the plan of unitization approved by the Commission are chargeable with the responsibility and cost of conducting such unitized methods of operation, development of the common source of supply or portion thereof described in the order, all upon such terms and conditions, as may be shown by the evidence to be fair, reasonable, equitable and which are necessary or proper to protect, safeguard, and adjust the respective rights and obligations of the several persons affected, including royalty owners, owners of overriding royalties, oil and gas payments, carried interests, mortgagees, lien claimants and others, as well as the lessees. To give the Commission jurisdiction hereunder, the petition shall be filed by, or with the authority of, lessees of record of fifty percent (50%) or more of the area of the common source of supply or portion thereof sought to be unitized. The petition shall set forth a description of the proposed unit area with a map or plat thereof attached, must allege the existence of the facts required to be found by the Commission as hereinabove provided and shall have attached thereto a recommended plan of unitization applicable to such proposed unit area and which the petitioners consider to be fair, reasonable and equitable. Laws 1945, p. 163, Par. 4.

Par. 286.5. UNIT AREA AND PLAN OF UNITIZATION.—The order of the Commission shall define the area of the common source of supply or portion thereof to be included within the unit area and prescribe with reasonable detail the plan of unitization applicable thereto.

Each unit and unit area shall be limited to all or a portion of a single common source of supply. Only so much of a common source of supply as has reasonably been defined by actual drilling operations may be so included within the unit area.

A unit may be created to embrace less than the whole of a common source of supply only where it is shown by the evidence that the area to be so included within the unit area is of such size and shape as may be reasonably

required for the successful and efficient conduct of the unitized method or methods of operation for which the unit is created, and that the conduct thereof will have no material adverse effect upon the remainder of such common source of supply.

The plan of unitization for each such unit and unit area shall be one suited to the needs and requirements of the particular unit dependent upon the facts and conditions found to exist with respect thereto. In addition to such other terms, provisions, conditions and requirements found by the Commission to be reasonably necessary or proper to effectuate or accomplish the purpose of this Act, and subject to the further requirements hereof, each such plan of unitization as the parties thereto may agree upon shall be fair, reasonable and equitable, and among other proper and equitable provisions, shall provide:

(a) For the efficient unitized management or control of the further development and operation of the unit area for the recovery of oil and gas from the common source of supply affected. Under such a plan the actual operations within the unit area may be carried on in whole or in part by the several lessees of leases within the unit area, subject to the supervision and direction of the unit, or may be conducted in whole or in part by the unit or some particular operator or operators of a lease or leases in the approved unit area dependent upon what is most beneficial or expedient. The designation of the operator shall be by vote of the lessees in the unit in a manner provided in the plan of unitzation and not by the Commission.

(b) The division of interest or formula for the apportionment and allocation of the unit production, among and to the several separately-owned tracts within the unit area such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately-owned tracts to produce or receive, in lieu thereof, their fair, equitable and reasonable share of the unit production or other benefits thereof. A separately-owned tract's fair, equitable, and reasonable share of the unit

production shall be measured by the value of each such tract for oil and gas purposes and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account acreage, the quantity of oil and gas recoverable therefrom, location on structure, its probable productivity of oil and gas in the absence of unit operations, the burden of operation to which the tract will or is likely to be subjected, or so many of said factors, or such other pertinent engineering, geological, or operating factors, as may be reasonably susceptible of determination. Unit production as that term is used in this Act shall mean and include all oil and gas produced from a unit area from and after the effective date of the order of the Commission approving the creation of the unit regardless of the well or tract within the unit area from which the same is produced;

(c) The manner in which the unit and the further development and operation of the unit area shall or may be financed and the basis, terms and conditions on which the cost and expense thereof shall be apportioned among and assessed against the tracts and interests made chargeable therewith, including a detailed accounting procedure governing all charges and credits incident to such operations. Upon and subject to such terms and conditions as to time and rate of interest as may be fair to all concerned, reasonable provisions shall be made in the plan of unitization for carrying or otherwise financing lessees who are unable to meet their financial obligations in connection with the unit.

(d) The procedure and basis upon which wells, equipment and other properties of the several lessees within the unit area are to be taken over and used for unit operations, including the method of arriving at the compensation therefor, or of otherwise proportionately equalizing or adjusting the investment of the several lessees in that project as of the effective date of unit operations.

(e) For the creation of an operating committee to have general over-all management and control of the unit and the conduct of its business and affairs and the operations

carried on by it, together with the creation or designation of such other subcommittees, boards or officers to function under authority of the operating committee as may be necessary, proper or convenient in the efficient management of the unit, defining the powers and duties of all such committees, boards or officers and prescribing their tenure and time and method for their selection. Each lessee within the unit area shall be entitled to representation on the operating committee and shall have a vote equal to the proportionate interest of such lessee in the unit, provided, where the voting interest of a lessee is such as to control the action taken by the committee, the vote of such lessee shall not serve to carry or defeat action by the committee unless such vote is supported by the vote of a majority of the remaining lessees.

(f) The time when the plan of unitization shall become and be effective;

(g) The time when and conditions under which and the method by which the unit shall or may be dissolved and its affairs wound up. Laws 1945, p. 164, Par. 5.

Par. 286.6. OBJECTION TO CREATION OF UNIT.—If at any time after the filing of a petition for the creation of a unit and within sixty (60) days after the entry of an order by the Commission approving the creation of the same, lessees of record of fifteen percent (15%) or more of the proposed unit area, if prior to the entry of the order by the Commission, or lessees of record of fifteen percent (15%) or more of the unit area as defined by the approved plan of unitization and order of the Commission, if after the entry of such order, shall file written protest with the Commission against the creation of the unit, the Commission shall vacate all action of any kind theretofore taken and dismiss the proceedings for the creation of such unit. The fact that a lessee joined in the petition seeking authority to create the unit or otherwise participated in any of the steps thereafter taken with the view of creating the same, shall not preclude such lessee from filing a protest pursuant to the provisions of this Section. Laws 1945, p. 165, Par. 6.

Par. 286.7. PROCEDURE AND APPEAL.—Except as otherwise herein expressly provided, all proceedings had under this Act[1] including the filing of petitions, the giving of notices, the conduct of hearings and other action taken by the Commission shall be in the form and manner and in accordance with the procedure and procedural requirements provided in Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes, 1941, or any amendment thereof with reference to proceedings thereunder. Such additional notice shall be given as may be required by the Commission. The Conservation Officer, his assistant and deputies and the Conservation Attorney shall act without additional compensation as technical advisors to the Commission to the extent that the Commission may require. Any person aggrieved by any order of the Commission made pursuant to this Act may appeal therefrom to the Supreme Court of the State of Oklahoma upon the same conditions, within the same time and in the same manner as is provided in said Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes, 1941, for the taking of appeals from the orders of the Commission made thereunder, except in any such appeal the Commission shall be impartial, inactive and shall not be represented directly or indirectly by the Conservation Attorney, the Attorney General or any other public official or person. The Supreme Court on appeal shall have jurisdiction and authority and it shall be its duty to review the record of proceedings and transcript of evidence and to consider the validity of the order of the Commission appealed therefrom. On appeal the order of the Commission appealed from shall be regarded as prima facie valid, fair, reasonable and equitable, but if the order is found to be contrary to the clear weight of the evidence, in any one of such respects, the same shall be vacated and set aside and the cause referred to the Commission for further proceedings not inconsistent with the judgment of the court; otherwise the said order shall be affirmed.

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[1]Sections 286.1-286.17 of this title.

In addition to any other remedy provided in this Act any interested person, firm or corporation within a unit area feeling himself aggrieved by any order of the Commission or the action of a unit thereunder, may at any time institute a suit in the District Court of the County in which the greater part of the unit area is located, as in other civil suits in equity, against the other lessees within the unit and in such suit have his rights and equities determined. Any person aggrieved by the judgment entered in such an action may appeal therefrom to the Supreme Court of the State of Oklahoma in the time and manner as appeals are taken in other civil actions. To the extent possible under existing laws the Supreme Court shall give precedence to all such appeals in the hearing and disposition thereof. Laws 1945, p. 165, Par. 7.

Par. 286.8. OPERATIONS IN VIOLATION OF PLAN OF UNITIZATION UNLAWFUL.—From and after the effective date of an order of the Commission approving the creation of a unit and approving the plan of unitization applicable thereto the drilling of any well into or the operation of any well producing from the common source of supply or portion thereof within the unit area defined in the order by persons other than the unit or persons acting under its authority or except in the manner and to the extent provided in such plan of unitization shall be unlawful and is hereby prohibited. Laws 1945, p. 166, Par. 8.

Par. 286.9. THE NATURE, PURPOSES AND FUNCTIONS OF UNITS, AND LIABILITY OF OWNERS OF OIL AND GAS RIGHTS THEREIN FOR UNIT EXPENSE.—Each unit created under the provisions of this Act[1] shall be a body politic and corporate, capable of suing, being sued and contracting as such in its own name. Each such unit shall be authorized on behalf and for the account of all the owners of the oil and gas rights within the unit area, without profit to the unit, to supervise, manage and conduct the further development and operations for the production of oil and gas from

[1]Sections 286.1-286.17 of this title.

the unit area, pursuant to the powers conferred, and subject to the limitations imposed by the provisions of this Act and by the plan of unitization.

The obligation or liability of the lessee or other owners of the oil and gas rights in the several separately-owned tracts for the payment of unit expense shall at all times be several and not joint or collective and in no event shall a lessee or other owner of the oil and gas rights in the separately-owned tract be chargeable with, obligated or liable, directly or indirectly, for more than the amount apportioned, assessed or otherwise charged to his interest in such separately-owned tract pursuant to the plan of unitization and then only to the extent of the lien provided for in this Act.

Subject to such reasonable limitations as may be set out in the plan of unitization, the unit shall have a first and prior lien upon the lease-hold interest only in the unitized common source of supply (exclusive of a one-eighth (⅛) royalty interest) in and to each separately-owned tract, the interest of the owners thereof in and to the unit production and all equipment in the possession of the unit, to secure the payment of the amount of the unit expense charged to and assessed against such separately-owned tract. The interest of the lessee or other persons who by lease, contract or otherwise are obligated or responsible for the cost and expense of developing and operating a separately-owned tract for oil and gas in the absence of unitization shall, however, be primarily responsible for and charged with any assessment for unit expense made against such tract and resort may be had to overriding royalties, oil and gas payments, royalty interests in excess of a one-eighth (⅛) of the production, or other interests which otherwise are not chargeable with such cost, only in the event the owner of the interest primarily responsible fails to pay such assessment or the production to the credit thereof is insufficient for that purpose. In the event the owner of any royalty interest, overriding royalty, oil and gas payment or other interest which

under the plan of unitization is not primarily responsible therefor pays in whole or in part the amount of an assessment for unit expense for the purpose of protecting such interest, or the amount of the assessment in whole or in part is deducted from the unit production to the credit of such interest, the owner thereof shall to the extent of such payment or deduction be subrogated to all of the rights of the unit with respect to the interest or interests primarily responsible for such assessment. A one-eighth (⅛) part of the unit production allocated to each separately-owned tract shall in all events be regarded as royalty to be distributed to and among, or the proceeds thereof paid to, the royalty owners free and clear of all unit expense and free of any lien therefor. Laws 1945, p. 166, Par. 9.

Par. 286.10. Property and Contract Rights.—Property rights, leases and other contracts, and all rights and obligations shall meet the provisions and requirements of this Act[1] and to any valid and applicable plan of unitization or order of the Commission made and adopted pursuant hereto, but otherwise to remain in full force and effect.

Nothing contained in this Act shall be construed to require a transfer to or vesting in the unit of title to the separatey-owned tracts or leases thereon within the unit area, other than the right to use and operate the same to the extent set out in the plan of unitization; nor shall the unit be regarded as owning the unit production. The unit production and the proceeds from the sale thereof shall be owned by the several persons to whom the same is allocated under the plan of unitization. All property, whether real or personal, which the unit may in any way acquire, hold or possess shall not be acquired, held or possessed by the unit for its own account but shall be so acquired, held and possessed by the unit for the account and as agent of the several lessees and shall be the property of such lessees as their interests may appear under the plan of unitization, subject, however, to the right of

[1]Sections 286.1-286.17 of this title.

the unit to the possession, management, use or disposal of the same in the proper conduct of its affairs, and subject to any lien the unit may have thereon to secure the payment of unit expense.

The amount of the unit production allocated to each separately-owned tract within the unit, and only that amount, regardless of the well or wells in the unit area from which it may be produced, and regardless of whether it be more or less than the amount of the production from the well or wells, if any, on any such separately-owned tract, shall for all intents, uses, and purposes be regarded and considered as production from such separately-owned tract, and, except as may be otherwise authorized in this Act, or in the plan of unitization approved by the Commission, shall be distributed among or the proceeds thereof paid to the several persons entitled to share in the production for[2] such separately-owned tract in the same manner, in the same proportions, and upon the same conditions that they would have participated and shared in the production or proceeds thereof from such separately-owned tract had not said unit been organized, and with the same legal force and effect. If adequate provisions are made for the receipt thereof, the share of the unit production allocated to each separately-owned tract shall be delivered in kind to the persons entitled thereto by virtue of ownership of oil and gas rights therein or by purchase from such owners subject to the right of the unit to withhold and sell the same in payment of unit expense pursuant to the plan of unitization, and subject further to the call of the unit on such portions of the gas for operating purposes as may be provided in the plan of unitization.

Operations carried on under and in accordance with the plan of unitization shall be regarded and considered as a fulfillment of and compliance with all of the provisions, covenants, and conditions, express or implied, of the several oil and gas mining leases upon lands included within the unit area, or other contracts pertaining to the develop-

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[2]Probably should read "from".

ment thereof, insofar as said leases or other contracts may relate to the common source of supply or portion thereof included in the unit area. Wells drilled or operated on any part of the unit area no matter where located shall for all purposes be regarded as wells drilled on each separately-owned tract within such unit area. Laws 1945, p. 167, Par. 10.

Par. 286.11. AMENDMENTS TO PLAN OF UNITIZATION.—In any proceeding hereunder in which an order is entered creating a unit, the Commission shall retain jurisdiction thereof and of all parties in interest for the purpose of amending the plan of unitization from time to time whenever by reason of changed conditions or otherwise for good cause shown it is made to appear that such amendment is necessary or proper. Such an amendment may be made only upon the petition of lessees of record of ten percent (10%) or more of the unit area. Any amendment to a plan of unitization made pursuant hereto shall be effective prospectively only from and after the date on which the order providing for such amendment shall become final. The procedure for any such amendment including the filing of a petition, the giving of notice and conduct of the hearing shall be the same as that required for the creation of a unit and the adoption of a plan of unitization in the first instance, insofar as applicable. Laws 1945, p. 168, Par. 11.

Par. 286.12. ENLARGEMENT OF UNITS.—The unit area of a unit may be unitized with adjoining and contiguous portions of the same common source of supply including the unit area of another or other units, and a unit created for the unitized management, operation and further development of such enlarged unit area upon the filing of a petition therefor and after notice and hearing, in the same manner, on the same conditions, but subject to the right of lessees of record of fifteen percent (15%) or more of an existing unit area to protest, and veto such enlargement or merger, all as herein provided with respect to the creation of a unit in the first instance. Upon the creation

of a larger unit embracing the unit area of one or more smaller units, the larger unit so created shall thereupon supersede such smaller unit or units. Laws 1945, p. 169, Par. 12.

Par. 286.13. PUBLIC LANDS.—The Commissioners of the Land Office, or other proper board or officer of the State having the control and management of State land, and the proper board or officer of any political, municipal, or other subdivision or agency of the State, are hereby authorized and shall have the power on behalf of the State or of such political, municipal, or other subdivision or agency thereof, with respect to land or oil and gas rights subject to the control and management of such respective body, board, or officer, to consent to or participate in any plan or program of unitization adopted pursuant to this Act.[1] Laws 1945, p. 169, Par. 13.

Par. 286.14. NO INCOME OR PROFIT SUBJECT TO TAXATION. —Neither the unit production or proceeds from the sale thereof, nor other receipts shall be treated, regarded, or taxed as income or profits of the unit; but instead, all such receipts shall be the income of the several persons to whom or to whose credit the same are payable under the plan of unitization. To the extent the unit may receive or disburse said receipts it shall only do so as a common administrative agent of the persons to whom the same are payable. Laws 1945, p. 169, Par. 14.

Par. 286.15. DEFINITIONS.—For the purposes of this Act,[1] unless the context otherwise requires:

(a) The term "lessee" refers not only to lessees under oil and gas leases but also to the owners of unleased lands or mineral rights having the right to develop the same for oil and gas.

(b) Any reference to a separately-owned tract, although in general terms broad enough to include the surface and all underlying common sources of supply of oil and gas

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[1]Sections 286.1-286.17 of this title.

shall have reference thereto only in relation to the common source of supply or portion thereof embraced within the unit area of a particular unit.

(c) The phrase "oil and gas" shall refer not only to oil and gas as such in combination one with the other, but shall have general reference to oil, gas, casinghead gas, casinghead gasoline, gas-distillate, or other hydrocarbons, or any combination or combinations thereof, which may be found in or produced from a common source of supply of oil, oil and gas or gas-distillate.

(d) The term "person" shall mean and include any individual, corporation, partnership, common law or statutory trust, association of any kind, the State of Oklahoma or any subdivision or agency thereof acting in a proprietary capacity, guardian, executor, administrator, fiduciary of any kind, or any other entity or being capable of owning an interest in and to a common source of supply of oil and gas.

(*d*) The term "unit expense" shall include and mean any and-all cost, expense, or indebtedness incurred by the unit in the establishment of its organization, or incurred in the conduct and management of its affairs or the operations carried on by it, authorized by the approved plan of unitization. Laws 1945, p. 169, Par. 15.

Par. 286.16. CONSTRUCTION OF ACT.—The provisions of this Act[1] are declared to be severable, and, if any section, sentence, clause or part thereof be held invalid or unconstitutional for any reason, such invalidity or unconstitutionality shall not be construed to affect the validity of the remaining provisions of this Act. Laws 1945, p. 170, Par. 16.

Par. 286.17. UNITIZATION AGREEMENTS NOT VIOLATIVE OF ANTI-TRUST LAWS OR IN RESTRAINT OF TRADE.—No agreement between or among lessees or other owners of oil and gas rights in oil and gas properties, entered into pursuant hereto or with a view or for the purpose of bringing

[1]Sections 286.1-286.17 of this title.

about the unitized development or operation of such properties, shall be held to violate any of the statutes of this State prohibiting monopolies or acts, arrangements, agreements, contracts, combinations or conspiracies in restraint of trade or commerce. Laws 1945, p. 170, Par. 17.

APPENDIX "B"

ORDER No. 20289 OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA.

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 1308 Order No. 20289

IN THE MATTER OF THE PETITION FOR THE CREATION OF THE WEST CEMENT MEDRANO UNIT HAVING FOR ITS PURPOSE THE UNITIZED MANAGEMENT, OPERATION AND FURTHER DEVELOPMENT OF THE WEST CEMENT MEDRANO COMMON SOURCE OF SUPPLY OF OIL AND GAS IN CADDO COUNTY, OKLAHOMA, THE DEFINING OF THE UNIT AREA THEREOF AND THE PRESCRIBING OF THE PLAN OF UNITIZATION APPLICABLE TO SUCH UNIT AND UNIT AREA.

REPORT AND ORDER OF THE COMMISSION

The above styled and numbered cause is a proceeding brought by the lessees of a substantial majority of the acreage in the West Cement Medrano oil and gas pool or field located in Caddo County, Oklahoma, seeking to unitize the management, operation and further development of said field for the purpose of preventing the waste of oil and gas and of substantially increasing the ultimate recovery of oil therefrom, all as authorized and provided for in H. B. 339 of the 1945 Oklahoma Legislature. The bringing of this proceeding followed months of cooperative study of the field and of the benefits of unitization en-

gaged in by substantially all of the operating lessees in the pool and in which all were invited to participate. The original petition herein, attached to which was a recommended Plan of Unitization applicable to said field, was filed October 23, 1946.

Pursuant to order of the Commission, said petition was first set for hearing November 7, 1946, at 10:00 o'clock, A. M., in the Commission Courtroom in the State Capitol Office Building at Oklahoma City, Oklahoma, and notice thereof published once a week for two consecutive weeks in a newspaper of general circulation in Caddo County, in which West Cement Medrano field is located, and for the same time in a newspaper of general circulation in Oklahoma County, Oklahoma.

At the time and place so fixed for said hearing, a large number of persons were present, not only lessees but also land owners, royalty owners and other persons having varying interests in the West Cement Medrano Field. A group of lessors and royalty owners, represented by their attorney, Reford Bond, Jr., advised the Commission that they had not had sufficient time within which to study the proposed Plan of Unitization and requested a continuance of the hearing. The granting of the continuance was agreed to by the petitioners who, through their attorneys, publicly announced that during the period of the continuance they stood ready and willing, upon request, to furnish any party in interest any factual data pertaining to the West Cement Medrano field and the proposed Plan of Unitization available to petitioners. At the same time Magnolia Petroleum Company, an operating lessee in the field, asked leave to sign the petition as one of the petitioners thereto. Whereupon, the Commission continued said hearing to December 9, 1946, at 10:00 o clock A. M. at the same place, permitted the Magnolia Petroleum Company to sign the petition as one of the petitioners, directed that the petition be refiled and ordered that notice of the refiling of the petition and of the date to which said hearing was continued be published in the same manner and

for the same time as was the first notice of hearing, all of which was done.

In advance of said original hearing date, as is its usual custom in oil and gas matters, the Commission mailed mimeographed copies of the petition, together with information as to the time of hearing, to all persons on its established mailing list, which includes all operating lessees within the West Cement Medrano field as well as a number of royalty and other interest owners.

The hearing of said cause was commenced at the time and place so fixed, namely, December 9, 1946, at 10:00 o'clock A. M., in the Commission Courtroom in the Capitol Office Building in Oklahoma City, Oklahoma, and continued at the same place throughout all the following days, to wit: December 9 and 23, 1946; January 6 and 7; February 25, 26, 27 and 28; May 13, 14, 15, 16, 20, 21, 22 and 23; July 15, 16, 17, 18, 22, 23, 24 and 25; all in 1947, except for said first mentioned dates in 1946. The continuance of said hearing from time to time was by proper orders of continuance. At said hearing the petitioners and subscribers to the proposed Plan of Unitization were represented by the following named attorneys: W. H. Brown, Russell G. Lowe, Booth Kellough, W. R. Wallace and R. M. Williams. The protestant, the Palmer Oil Corporation appeared by its attorneys, Mark H. Adams and Charles Jones, of Wichita, Kansas. Protestants Tom Potter, Clyde Kahle, Maude Kahle, Bob White Oil and Gas Company and a group of approximately 65 lessors and royalty owners appeared by their attorney, Reford Bond, Jr. The protestants B. E. Johnson, Virginia McIntyre and M. L. McIntyre appeared by their attorney, Jack Page. A number of royalty and other interest owners wrote letters to the Commission urging the granting of the petition, all of which appear in the record. Other royalty owners and various parties in interest were present at the hearing from time to time but took no part.

At the hearing everyone who desired to do so, regardless of the interest of such person, was given full opportunity to offer any and all competent evidence that any

such person chose to offer, either for or against the recommended Plan of Unitization or by way of amendment thereto, and to otherwise be heard in regard thereto. The evidence so introduced consisted of extensive geological, engineering and other proof concerning the history, discovery, development, operation and present condition of the West Cement Medrano field and the probable results obtainable both under present competitive methods of operation and through the unitization thereof; proof both pro and con as to the fairness, reasonableness and equitableness of the recommended Plan of Unitization; and proof by protestants with respect to certain amendments which they claim should be made in said Plan.

In addition to the knowledge gained from the evidence introduced at said hearing, the Commission has had, over a period of time, a general knowledge of the West Cement Medrano field and of conditions existing therein gained through the exercise by it of its jurisdiction over such field under the Conservation Laws of the State of Oklahoma, dating from the discovery thereof. As a result of the evidence, statements and arguments introduced and made in the hearing here under consideration, and by reason of its general knowledge of said West Cement Medrano field, as aforesaid, the Commission is of the opinion that it has sufficient knowledge and information upon which to base a proper order in this cause.

In addition to the proceedings and notices aforesaid, further mention is here made of the fact that during the course of said hearing, The Palmer Oil Corporation drilled and completed an additional well on a lease owned by it in the aforesaid field, necessitating a relatively slight change in the percentage of interests of the several separately owned tracts in the field shown in "Exhibit B" attached to the recommended Plan of Unitization, and also necessitating the inclusion of such additional well in "Exhibit D" attached to said Plan of Unitization. Also as a result of the time consumed by the hearing, it was considered desirable by the petitioners and subscribers to the recommended Plan of Unitization to strike from

Section XXVII of said Plan the time limitation therein contained. To accomplish the aforesaid objectives, the petitioners during the course of the hearing asked and without objection were granted leave to amend the petition accordingly. In order to permit persons not present at the hearing an additional opportunity to be heard with respect to said amendment, the Commission set the petition as amended for further hearing on July 29, 1947, at 10:00 o'clock A. M., in the Commission Courtroom in the State Capitol Office Building at Oklahoma City, Oklahoma, and caused notice of the amendment to said petition and of the hearing thereon to be published, ten (10) days prior to said hearing date, in a newspaper of general circulation in Oklahoma County, Oklahoma. At the time and place so named, the further hearing was had in said cause upon the petition as amended, no one appearing, however, in opposition thereto.

Now, on this 5th day of September, 1947, the Commission having previously taken said cause under advisement and having considered the matter in conference and each of the Commissioners being well and fully advised, the Commission makes the following findings of fact, conclusions of law, and enters the following order authorizing and approving the creation of the West Cement Medrano Unit, defining of the Unit Area thereof and prescribing of the Plan of Unitization applicable to such Unit and Unit Area.

Findings of Fact and Conclusions of Law

The Commission finds:

1. That notice of the filing of the original petition, the refiling thereof after being signed by the Magnolia Petroleum Company, the filing of the amendment thereto and the time, place and purpose of the hearings on the petition, both as originally filed and as amended, was given in all respects as by law required, and that the Commission has jurisdiction of the subject matter of said petition and amended petition and of all persons interested therein,

and has jurisdiction to make and promulgate the hereinafter prescribed order.

2. That the lands (hereinafter designated and referred to as the "Unit Area") located in Caddo County, Oklahoma and outlined by the hatched line on the map marked "Exhibit A" and attached to the Plan of Unitization attached to and made a part of this order, are underlaid with an oil and gas-bearing formation known as the Medrano sandstone found at a depth ranging from approximately 4500 feet along the North and Northeast side of the Unit Area and an approximate depth of 6241 feet along the South and Southwest side of the Unit Area; that a gas cap exists along the high part of the producing formation from which the primary production is gas, whereas, the primary production from wells drilled lower on the structure is oil; that the average sand or formation thickness in the gas cap area or zone is approximately 65 feet; that the average sand or formation thickness in the oil area or zone is approximately 95 feet; that the said Medrano sandstone underlying said above described lands as aforesaid constitute a single common source of supply of oil and gas, all parts of which are permeably connected so as to permit the migration of oil or gas or both from one portion of said common source of supply to another wherever and whenever pressure differentials are created as a result of the production or operations for the production of oil or gas from said producing formation; that although faults are known to exist in parts of said common source of supply said faults do not prevent substantial migration of oil and gas and of pressures from one part of said common source of supply to another; that said common source of supply of oil and gas has heretofore been designated by the Commission and is generally known as the West Cement Medrano pool.

3. That said common source of supply of oil and gas was first discovered in October, 1936, by the drilling and completion of the Magnolia Petroleum Company's Medrano No. 6 gas well in the SE/4 of the NE/4 of the SW/4 of Section 36, Township 6 North, Range 10 West,

Caddo County, Oklahoma; that the presence of oil in said common source of supply of oil and gas was first discovered in March, 1943, by the drilling and completion of the Stephens Petroleum Company's Pierson No. 1 oil well in the SE/4 of the SW/4 of the SE/4 of Section 35, Township 6 North, Range 9 West, Caddo County, Oklahoma; that at the present time there are 37 oil wells and 19 gas wells producing from said common source of supply of oil and gas.

4. That the outer boundaries of said common source of supply of oil and gas underlying and by this Order included within the aforesaid Unit Area have been reasonably defined by actual drilling operations, both by the drilling of wells within and the drilling of wells outside said Unit Area; that said Unit Area consists of approximately 3700 acres of land.

5. That the lands embraced within the aforesaid Unit Area are divided into a large number of individual tracts of varying size and shape, and owned in severalty by a large number of different individuals, firms and corporations owning varying interests therein, including oil and gas leasehold interests, royalty interests and various and sundry other rights and interests; that the several oil and gas leases covering said lands are owned by not less than 25 different lessees; that the royalty interests under said land are divided among and owned by several hundred royalty owners; that the petitioners in this cause are lessees of record of 73.32% of the area of the common source of supply sought to be unitized; that the subscribers to the recommended Plan of Unitization and other lessees favoring its adoption are lessees of record of approximately 94% of the area of said common source of supply; that the lessees appearing at the hearing and protesting the granting of the petition herein are lessees of approximately 4% of the proposed Unit Area; that the lessees of the remaining percentage of the Unit Area have not appeared for or against the granting of the petition herein.

6. That without the unitization of said West Cement Medrano common source of supply of oil and gas the only method whereby said pool can be feasibly and effectively operated and produced for the recovery of oil and gas therefrom is by and under individual competitive pressure depletion methods of operation, the methods now being used in the pool, that is to say, by treating each separately owned tract or lease as a separate unit for operating and production purposes and depending on the natural energy in the producing formation to move what oil and gas can be moved thereby out of the formation to the well bore where it can be produced; that the principal natural energy mechanism in said pool is gas in solution with the oil coupled with a gas cap expansion; that under present competitive methods of operation, treating each tract or lease as a separate operating unit, there has been and still continues to be a disproportionate, inequitable and wasteful utilization and dissipation of the gas energy in the pool by certain tracts to the detriment and disadvantage of other tracts and to the injury of the pool as a whole; that by and under the best known competitive pressure depletion methods of operation not more than 25% or approximately 24 million barrels of the 97 million barrels of oil originally in place in the reservoir can be economically recovered, leaving the remaining 75%, or approximately 73 million barrels of oil in the ground unrecovered and unrecoverable except through and by means of unitization of the pool and the adoption of unitized methods of operation therein; that to permit the owners of gas wells and high gas-oil ratio wells to continue to produce such wells will result in robbing the oil wells of gas energy required to produce the oil; that to shut in the gas wells and the high gas-oil ratio wells without permitting the owners thereof to share in the oil and gas production from the oil wells, would deprive the owners of the gas wells of their fair share of the production from the pool; that the value of the recoverable oil exceeds many times the market value of the gas; that the return to the reservoir of the gas produced from the oil to supplement the remain-

ing natural gas energy and retard the decline in reservoir pressure and perhaps the injection at some later date of water low on structure is desirable and necessary to obtain the greatest ultimate recovery of oil from the pool, but which cannot be done in the absence of unitization because of the migratory nature of the injected gas or water and the effect that the injection thereof into the reservoir would have upon properties in the pool other than the property on which the gas or water is injected and upon the pool as a whole.

7. That by and through the unitization of the proposed Unit Area and the unitized management and operation and fur.her development thereof as a unit, all as set out and provided for in the Plan of Unitization hereto attached, full use can be made of the gas energy in the reservoir to the mutual advantage of all the owners of the said common source of supply of oil and gas, that waste of large volumes of oil and gas can be prevented, gas can and will be returned to the reservoir to supplement the natural reservoir energy, water encroachment, either natural or artificial, on the lower side of the pool can be properly controlled and utilized, substantially more oil, amounting to many millions of barrels, can be recovered from the common source of supply than can otherwise be recovered, a more equitable distribution of the recoverable oil and gas can be had as between the several owners of the pool and the correlative rights of the several owners can be more fully protected.

8. The unitization and unitized management and operation and further development of said common source of supply as a unit is reasonably necessary to effectively carry on the unitized methods of operation described in the proposed Plan of Unitization.

9. That any one or all of the unitized methods of operation described in the attached Plan of Unitization as applied to the common source of supply underlying and included within the Unit Area are feasible, will prevent waste, and will, with reasonable probability, result in the increased recovery of substantially more oil and gas from

the common source of supply than would otherwise be recovered; that the estimated additional cost of conducting such operations will not exceed the value of the additional oil and gas so recovered; that such unitization and the adoption of any one or more of such unitized methods of operation is for the common good and will result in the general advantage to the owners of the oil and gas rights in and to the common source of supply thereby affected.

10. That neither said West Cement Medrano common source of supply of oil and gas nor any part or parts thereof were being operated by or under pressure maintenance, repressuring or secondary recovery methods of operation as of the effective date of H. B. 339 of the 1945 Oklahoma Legislature.

11. That the Plan of Unitization attached to this order and which is made a part hereof, is one suited to the needs and requirements of the West Cement Medrano Unit, the creation of which is hereby authorized and approved, taking into account all the facts and conditions found by the Commission to exist in respect thereto; that said Plan of Unitization is fair, reasonable and equitable and contains all the terms, provisions, conditions and requirements reasonably necessary and proper to protect, safeguard and adjust the respective rights and obligations of the several persons affected, including royalty owners, owners of overriding royalty interests, oil and gas payments, carried interests, mortgagees, lien claimants, and others, as well as the lessees and such as will effectuate and accomplish the purposes of H. B. 339 of the 1945 Oklahoma Legislature; that said Plan of Unitization provides for the efficient unitized management and control of the further development and operation of the Unit Area for the recovery of oil and gas from the common source of supply affected; that the division of interests set forth in "Exhibit B" attached to said Plan of Unitization pursuant to which the unit production is to be apportioned and allocated among and to the several separately owned

tracts within the Unit Area is fair and equitable and is such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately owned tracts to receive, in lieu thereof, their fair, equitable and reasonable share of the unit production or other benefits thereof; that the division of interest assigned to the several separately owned tracts in the Unit Area as set out in said "Exhibit B" to said Plan of Unitization is fair and reasonably representative of the value of said several tracts for oil and gas purposes and the contributing value thereof to the unit in relation to like values of other tracts in the unit; that the basis used to arrive at said division of interest takes into account the acreage of the several separately owned tracts, the quantity of oil and gas recoverable therefrom, the location thereof on structure, the probable productivity of oil and gas from such tracts in the absence of unitization, the burden of operation to which such tracts will or are likely to be subjected, together with all other pertinent engineering, geological and operating factors as are reasonably susceptible of determination; that the manner in which and the basis, terms and conditions on which the cost and expense of the further development and operation of the Unit Area shall be financed and apportioned among and assessed against the tracts and interests chargeable therewith are fair, reasonable and equitable; that the provisions of the said Plan with respect to taking over and using the wells, equipment and other properties of the several lessees within the Unit Area, including the method of arriving at the compensation therefor and otherwise proportionately equalizing and adjusting the investment of the several lessees in the project as of the effective date of the unit operations are fair, reasonable and equitable; that the provisions of said Plan with respect to the creation of an operating committee and the powers and duties of such committee are fair, reasonable and equitable.

12. That the Plan of Unitization hereto attached in all respects conforms to and complies with the requirements of H. B. 339 of the 1945 Oklahoma Legislature.

13. That the West Cement Medrano pool is a field within the meaning of that term as used in the second paragraph of Section 2 of H. B. 339 of the 1945 Oklahoma Legislature; that the term "field" in ordinary usage has no fixed or definite meaning but is sometimes used to refer to the general area where a number of oil or gas producing formations are found and at other times used to refer to a particular common source of supply or pool; that as used by the Legislature aforesaid, the term was intended to relate to the particular common source of supply or pool sought to be unitized under the Act and not to any general area which in a broader sense could be termed a field; that in effect said Act throughout relates to and deals only with single common sources of supply of oil and gas.

Order

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1. That the petition filed herein be and the same is hereby granted.

2. That the creation of the West Cement Medrano Unit as prayed in said petition be and the same is hereby authorized and approved.

3. That the Unit Area of said unit shall extend to and include all of the West Cement Medrano common source of supply of oil and gas outlined by the hatched lines on the map marked "Exhibit A" attached to the Plan of Unitization attached to this order.

4. That the Plan of Unitization hereto attached and which by reference is made a part of this order is hereby approved and shall constitute the Plan of Unitization of and for said West Cement Medrano Unit and the Unit Area of said Unit, all to the same extent and with the same force and effect as if copied herein in its entirety.

5. Nothing herein contained shall be construed as a waiver by the Commission of any of its powers or authority over the West Cement Medrano Unit or the persons

comprising said unit, or the development and operation of the Unit Area thereof under the general oil and gas conservation laws of the State of Oklahoma, it being expressly recited that the Commission has and retains continuing jurisdiction over the operations carried on by the unit to the same extent that it would have jurisdiction over any other lessee or person producing oil and gas from the West Cement Medrano pool or field in the absence of unitization.

6. The Unit shall from time to time make such reports to the Commission concerning the operation by it of the Unit Area as may be requested by the Commission.

Done and performed by the Corporation Commission at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this 5th day of September, 1947.

CORPORATION COMMISSION OF OKLAHOMA,

(Signed) REFORD BOND, *Chairman.*
(Signed) RAY O. WEEMS, *Vice-Chairman.*
(Signed) RAY C. JONES, *Commissioner.*

Attest:

(Signed) TOM MCMURRAY, *Secretary.*

(Seal)

APPENDIX "C"

INDEX

PLAN OF UNITIZATION OF WEST CEMENT MEDRANO UNIT

EXHIBITS

PLAN OF UNITIZATION OF WEST CEMENT MEDRANO UNIT

Know all men by these presents:

The following shall constitute the Plan of Unitization applicable to the West Cement Medrano Unit created pursuant to authority of House Bill 339 of the 1945 Legislature of the State of Oklahoma and having for its purpose the unitized management, operation and further development of the Medrano Sand common source of supply of Oil and Gas underlying the lands outlined by the hatched line on the map hereto attached and marked "Exhibit A", all to the end that a greater ultimate recovery of Oil and Gas may be had therefrom, waste prevented and the correlative rights of the respective owners protected.

I

Definitions

As used in this Plan of Unitization, the following terms and expressions are defined as follows:

(a) "Unit" shall mean the West Cement Medrano Unit.

(b) "Commission" shall mean the Corporation Commission of the State of Oklahoma.

(c) "Person" shall mean any individual corporation, partnership, common law or statutory trust, association of any kind, the State of Oklahoma or any subdivision or agency thereof acting in a proprietary capacity, guardian, executor, administrator, fiduciary of any kind or any other entity capable of holding an interest in and to the Unit Area.

(d) The pronoun "it" is used to refer to any person regardless of gender.

(e) "Unit Production" shall mean and include all Oil and Gas produced from the Unit Area from and after the Effective Date hereof regardless of the well or tract within the Unit Area from which the same is produced.

(f) "Lessee" shall mean any owner, in whole or in part, of an Oil and Gas Lease or any unleased mineral interest, who alone or in association with another person or persons has the right, except for this Plan of Unitization, to explore, develop and operate a Separately Owned Tract for Oil and Gas and in so doing would be personally chargeable with a proportionate part of the cost and expense of the operation thereof. An owner of an overriding royalty interest, oil payment, carried interest, net profit contract, or other oil and gas rights of a similar nature, who is not personally chargeable with the cost and expense of operations, shall not be regarded as a Lessee.

(g) "Unit Operator" shall mean and refer to the Lessee designated to carry on and conduct the Unitized Operations within the Unit Area as provided in Section X hereof.

(h) "Oil and Gas" shall not only refer to oil and gas as such in combination one with the other, but shall have reference to oil, gas, casinghead gas, casinghead gasoline or other hydrocarbons, or any combination or combinations thereof, or any one thereof, which may be found in or produced from the Unit Area.

(i) "Oil and Gas Rights" shall mean and include the right to explore, develop and operate lands within the Unit Area for the production of Oil and Gas, to reduce the same to possession or to share in the production so obtained or the proceeds thereof.

(j) "Effective Date" shall mean the date on which the Unit assumes and takes over the operation of the Unit Area as is provided in Section IX hereof.

(k) "Unit Expense" shall include any and all cost, expense or indebtedness incurred by the Unit or Unit operator as authorized by this Plan of Unitization or the order of the Commission creating the Unit.

(l) "Unqualified Subscribers" shall mean and refer to those Lessees who sign this Plan of Unitization as Unqualified Subscribers as is provided for in Section XXVII hereof.

(m) "Qualified Subscribers" shall mean and refer to those Lessees who sign this Plan of Unitization as Qualified Subscribers as is provided for in Section XXVII hereof.

II

Name

The name of the Unit created hereby shall be West Cement Medrano Unit.

III

Unit Area

The Unit Area of the Unit shall extend to and include all of the Medrano Sand formation underlying the lands outlined by the hatched line on the map hereto attached, marked "Exhibit A" and made a part hereof, the same being a single common source of supply of Oil and Gas, located in Caddo County, Oklahoma.

IV

Separately Owned Tracts

Each tract of land within the Unit Area, which by virtue of the ownership thereof in fee, or by common ownership of the Oil and Gas Rights therein or by lease or other agreement among the owners thereof, is presently regarded as a single tract or leasehold estate for the purpose of Oil and Gas development and operation shall be defined, regarded and treated as a Separately Owned Tract within the purview and meaning of this Plan of Unitization. The Separately Owned Tracts as so defined and established are shown on the map hereto attached and marked "Exhibit A" and are for convenient identification numbered thereon and may be referred to by number.

V

General Powers of Unit

The Unit is authorized and empowered on behalf and for the account of all the Lessees within the Unit Area, without profit to the Unit, to supervise, manage and conduct the further development and operation of the Unit Area for the production of Oil and Gas, pursuant to the powers conferred and subject to the limitations imposed by the provisions of House Bill 339 of the 1945 Session of the Oklahoma Legislature and by this Plan of Unitization.

VI

Effect of Unitization

The adoption of this Plan of Unitization and the creation of the Unit as herein provided shall have the effect from and after the Effective Date hereof of unitizing all further development and operations for the production of Oil and Gas from the Unit Area and of pooling and unitizing the production so obtained, all to the same extent as if the Unit Area had been included in a single lease and all rights thereunder owned by the Lessees in undivided interests. Property rights, leases, contracts and all other rights and obligations in respect of the Oil and Gas Rights in and to the several Separately Owned Tracts within the Unit Area are hereby amended and modified to the extent necessary to make the same conform to the provisions and requirements of this Plan of Unitization, but otherwise to remain in full force and effect.

The relationship between the Lessees within the Unit Area, resulting from the creation of the Unit shall not be that of a trust, partnership or association but shall be in the nature of the tenancy in common.

Nothing herein contained shall be construed to require or result in a transfer to or the vesting in the Unit of title to the Separately Owned Tracts within the Unit Area or to the leases thereon, other than the right to use

and operate the same to the extent set out in this Plan of Unitization; nor shall the Unit be regarded as owning any of the Unit Production. The Unit Production and the proceeds from the sale thereof shall be owned by the several persons to whom the same is allocated under this Plan of Unitization. All property, real or personal, acquired, held or possessed for use in the operation of the Unit Area shall be the property of the Lessees as their interests may appear under this Plan of Unitization, subject, however, to the rights and powers herein granted the Unit and the Unit Operator.

The amount of the Unit Production allocated to each Separately Owned Tract and only that amount, regardless of the well or wells in the Unit Area from which it may be produced, and regardless of whether it be more or less than the amount of the production from the well or wells, if any, on any such Separately Owned Tract shall, for all intents, uses and purposes, be regarded and considered as production from such Separately Owned Tract.

Operations carried on, under and in accordance with this Plan of Unitization shall be regarded and considered as a fulfillment of and compliance with all the provisions, covenants and conditions, express or implied, of the several oil and gas mining leases upon lands included within the Unit Area, or other contracts pertaining to the development thereof, to the same extent that the development and operation of and the production of Oil and Gas from each of the several Separately Owned Tracts within the Unit Area would have constituted a fulfillment of and compliance with such leases and contracts. Wells drilled or operated on any part of the Unit Area, no matter where located, shall for all purposes be regarded as wells drilled on each Separately Owned Tract within the Unit Area.

VII

Allocation of Unit Production

All Unit Production, except so much thereof as is used in the development and operation of the Unit Area, including repressuring, pressure maintenance and other operations carried on in accordance with this Plan of Unitization, or is unavoidably lost, shall be apportioned among and allocated to the several Separately Owned Tracts within the Unit Area in accordance with the percentage and division of interest set forth and shown in Part I of "Exhibit B" hereto attached, subject, however, to the further provisions of Part II of said Exhibit.

Except as may be otherwise authorized or provided in this Plan of Unitization, the Unit Production allocated to each Separately Owned Tract shall be distributed among or the proceeds thereof paid to the several persons entitled to share in the production from such Separately Owned Tract in the same manner, in the same proportions, and upon the same conditions that they would have participated and shared in the production from such Separately Owned Tract, or the proceeds thereof, had not the Unit been organized, and with the same legal force and effect.

Except as may be otherwise authorized or provided in this Plan of Unitization, and provided adequate provisions are made for the receipt thereof, the share of the Unit Production allocated to each Separately Owned Tract shall be delivered in kind to the persons entitled thereto by virtue of ownership of Oil and Gas Rights therein or by purchase from such owners, subject, however, to the right of the Unit Operator to withhold and sell the same in payment of Unit Expense pursuant to this Plan of Unitization, and subject further to the right of the Unit Operator to take and use such portion of the Unit Production (including residue gas) as may be required for operating purposes, including repressuring, pressure maintenance and any other operation carried on, pursuant to this Plan of Unitization. Persons so entitled

to take and receive in kind any portion of the Unit Production shall have the right to construct, maintain and operate within the Unit Area all necessary facilities for that purpose, provided the same are so constructed, maintained and operated as not to interfere with the operations carried on pursuant hereto.

To the extent that any person entitled to take and receive in kind any portion of the Unit Production shall fail to take and receive the same currently as and when produced, the Unit Operator, as agent and for the account and at the expense of such person, is authorized to market and sell or itself purchase, at not less than the market price prevailing at the time of such sale or purchase, the portion of Unit Production not so taken in kind by the person entitled to take and receive the same. Proceeds of the Unit Production so sold, or purchased by the Unit Operator, shall be paid by the Unit Operator to the person or persons for whose account the same is so marketed.

The person or persons receiving in kind the Unit Production allocated to any Separately Owned Tract or receiving the proceeds of such Unit Production, if the same is marketed and sold, or purchased by the Unit Operator, shall be responsible for the payment of, and shall indemnify the Unit, the other Lessees and the Unit Operator against any liability for, any and all royalties, overriding royalties, production payments, gross production taxes and any and all other payments and taxes chargeable against or payable out of the Unit Production which is received in kind by, or the proceeds of which are paid to, such person or persons, and neither the Unit nor the Unit Operator shall have any responsibility or liability for payment of such royalties, overriding royalties, production payments, gross production taxes or the other payments or taxes.

If at any time the title or right of any person claiming the right to receive in kind all or any portion of the Unit Production allocated to a Separately Owned Tract is in

dispute or is disapproved by the Operating Committee, the Unit Operator shall at the direction of the Operating Committee either (a) withhold and market, or itself purchase the portion of the Unit Production, title to which is in dispute or is disapproved, and impound the proceeds thereof until such time as the title or right thereto is established, by final judgment of a court of competent jurisdiction or otherwise to the satisfaction of the Unit Operator, whereupon, the proceeds so impounded shall be paid, without interest, to the person or persons rightfully entitled thereto, or (b) may require that the person or persons to whom such Unit Production is delivered, or to whom the proceeds thereof are paid, furnish security for the proper accounting therefor to the rightful owner or owners in the event the title or right of such person or persons shall fail, in whole or in part.

The Unit Operator shall have the right to take and utilize so much of the Unit Production as may be necessary or desirable in the development and operation of the Unit Area, including but without being limited to, the use of gas (including residue gas) for repressuring, pressure maintenance or other operations carried on in accordance with this Plan of Unitization. No royalties, overriding royalties, production payments or other payments shall be payable upon or with respect to that portion of the Unit Production so taken and utilized by the Unit Operator or which may be lost in handling or otherwise without want of due diligence on the part of the Unit Operator.

VIII

Operating Committee

An Operating Committee is hereby created to consist of one representative to be designated by each Lessee within the Unit Area, provided that an individual Lessee may himself be a member of the Committee. Such designation shall be in writing and with respect to the representative to participate at the organization meeting of the

Committee shall be presented at such meeting, or if thereafter made, shall be filed with the Secretary of the Operating Committee. Any such Lessee may in like manner (a) designate an alternate representative on the Operating Committee, who, in the absence of the Lessee or its regular representative, shall have the same full right and power to represent the interest of such Lessee, or (b) may from time to time discharge any such regular or alternate representative and designate a new representative to act for such Lessee on the Operating Committee.

The Operating Committee shall have the general overall management and control of the Unit and the conduct of its business and affairs and the operations carried on by it, and is authorized and empowered, subject to the terms and provisions hereof, to do all things necessary, proper and convenient for carrying out the terms and spirit of this Plan of Unitization and to that end, not excluding or limiting any other power or powers that may be necessary or proper for that purpose, shall have the following specific powers and duties:

(a) To adopt rules and regulations for the proper functioning of the Operating Committee, including such matters as the time and places of holding meetings, the calling thereof or the manner of taking the vote on any question all in a manner not inconsistent with the express requirements of this Plan of Unitization.

(b) To remove any Unit Operator.

(c) To select a successor to any Unit Operator.

(d) To determine the extent of drilling operations and development to be carried on by the Unit Operator, including the approval or disapproval of the contemplated drilling, deepening, plugging back, reconditioning, abandonment or the use to be made of any well or wells.

(e) To pass upon and approve or disapprove all costs and estimates of costs and any proposed expenditure by the Unit Operator; provided, that the Committee may permit without prior approval by it the incurring of normal operating expense and any proposed expenditure by

the Unit Operator of not more than Five Thousand ($5,000.00) Dollars; and provided further that the approval by the Operating Committee of the drilling of any well or wells or carrying out any specific project of development or operation shall mean and include the approval of all necessary expenditures in drilling, completing and equipping such well or wells or carrying out such project.

(f) To determine from time to time the rate at which and the wells from which the Unit Production shall be produced in conformity with good engineering practices and any applicable conservation laws or regulations.

(g) To pass upon, approve or disapprove the purchase, sale or other disposal of materials and equipment by the Unit Operator otherwise than in the normal course of approved operations.

(h) To approve and authorize the purchase, construction, location, abandonment, sale or other disposal of any compressor plant, gasoline plant, tank batteries, salt water disposal system or other facilities serving the Unit Area.

(i) To determine the manner in which, the location at which and the extent to which gas can best and should be injected into the reservoir to accomplish the Plan of Operation set forth in Section XV hereof.

(j) To provide for the proper auditing of the accounts of the Unit Operator with respect to the operation and development of the Unit Area.

(k) To appoint such sub-committees as it may deem proper and requisite, as for example, an advisory committee, legal committee, engineering committee, plant committee, geological committee and tax committee to act under the authority and subject to the control of the Operating Committee consonant with the terms of this Plan of Unitization.

(l) To approve or disapprove any proposed plan of development or operation or amendment thereof required to be submitted to any regulatory body having jurisdiction of the subject matter thereof.

(m) To approve or disapprove any proposed expenditures for expert technical advice, including any extra services rendered by the Unit Operator's technical staff, not contemplated by the provisions of the accounting procedure hereto attached, marked "Exhibit C" and not covered by the overhead charges therein authorized, which overhead charges in said accounting procedure are intended to cover only normal lease development and lease operations.

(n) To direct and consult with the Unit Operator in all matters pertaining to the duties and functions of the Unit Operator.

(o) To provide for the finances in the manner herein provided for the carrying on of the Unit Operations hereunder.

Each Lessee within the Unit Area who is represented on the Operating Committee shall have a vote equal to the proportionate interest of said Lessee in the Unit determined as follows:

(a) In respect of each Separately Owned Tract, the Lessee or Lessees thereof shall have a vote equal to the percentage indicated opposite such Separately Owned Tract in Part I of "Exhibit B" hereto attached.

(b) Should there be more than one Lessee of a Separately Owned Tract, the vote in respect thereof shall be divided between such Lessees in proportion as such Lessees share in the Unit Expense chargeable to such tract.

(c) The vote of a Lessee having an interest in more than one Separately Owned Tract shall be the sum total of the votes of such Lessee in respect of all such tracts.

In all matters except the removal of a Unit Operator the vote on behalf of Lessees having at least 66⅔% of the total voting interest in the Unit shall control.

A Unit Operator may be removed only by the vote of at least 75% in interest of the Lessees other than such Unit Operator.

If at any time the voting interest of a Lessee should be such as to control the action taken by the Committee,

the vote of such Lessee shall not serve to carry or defeat action taken by the Committee unless such vote is supported by the vote of a majority in interest of the remaining Lessees.

Minutes shall be made of all meetings of the Operating Committee and kept as a part of the permanent records of the Unit. Such minutes need not be a verbatim record of all the proceedings, but shall show and reflect (a) the names of all members present at the meeting; (b) all motions and resolutions offered or acted upon, together with the result of such action; and (c) such other formal action as may be taken by the Committee. A copy of the minutes of each such meeting shall be mailed to each member of the Committee within a reasonable time after the meeting.

Notices or other communications addressed and sent to the Unit or to the Operating Committee by United States mail or telegraph in care of the Unit Operator shall be deemed to have been properly given to or served upon the Operating Committee. The Unit Operator shall promptly deliver all such notices or communications to the Chairman or Secretary of the Operating Committee.

IX

Organization of Unit and Effective Date of Plan

Subject to call by Lessees of record owning 50% or more in interest in and to the Unit as shown in Part I of "Exhibit B" hereto attached the representatives designated by the several Lessees to serve on the Operating Committee shall meet at some convenient place to perfect the organization of the Operating Committee. Such meeting may be held at any time after twenty (20) days from the date of the order of the Commission approving this Plan of Unitization. Notice of the time and place of said meeting shall be mailed at least ten (10) days prior thereto to all Lessees within the Unit Area whose names and addresses are known to the Lessees calling said meeting, as well as those Lessees who shall have within ten

(10) days from the date of said order notified the Secretary of the Commission in writing of their desire to be so notified of the meeting. Any Lessee within the Unit Area desiring notice of such meeting may file a statement of such desire with the Secretary of the Commission, giving its name and the address to which it desires the notice to be sent.

The Operating Committee shall organize by selecting a Chairman, a Vice-Chairman, a Secretary and such other officers as to the Committee may seem proper. The Chairman and Vice-Chairman shall be selected from among the members of the Operating Committee. The Secretary and other officers may or may not be members of the Committee. The Chairman shall preside at all meetings of the Operating Committee when he is present and shall be the Chief Executive Officer of the Unit. The Vice-Chairman shall perform all duties of the Chairman in the absence of the Chairman. The Secretary shall keep and maintain all the records of the Committee and shall also be Secretary of the Unit. Such officers shall serve at the will of the Operating Committee and perform such other duties as are delegated to them by the Operating Committee.

Upon completion of its organization, the Operating Committee shall proceed to make plans and preparations and take such steps as are necessary for the taking over of the unitized operations and further development of the Unit Area by the Unit, and shall in advance thereof fix the time when the Unit will take over such operation and development, and give the Lessees within the Unit Area reasonable notice thereof. The time so fixed shall not be less than sixty-one (61) days after the entry of the order of the Commission approving this Plan of Unitization nor more than three months after the time when said order shall have become final.

The time when the Unit takes over the operation and further development of the Unit Area shall be the Effective Date of this Plan of Unitization.

In the event the Unit shall fail to assume and take over the operation of the Unit Area on or before three (3) months after the time when the order of the Commission approving this Plan of Unitization shall have become final, then and in that event the Unit shall, without further action on the part of the Operating Committee or the Commission, be dissolved and all rights and obligations under this Plan of Unitization shall be at an end, except that any and all cost and expense incurred by the Unit incident to its organization or preparatory to the taking over of the operation of the Unit Area shall be borne and paid for by the Lessees whose representatives on the Operating Committee by their vote authorized the incurring of such expense, in proportion as the interest of each such Lessee in and to the Unit as set out in Part I of "Exhibit B" bears to the total interest of all such Lessees in and to the Unit as shown on said Part I of "Exhibit B." In the event the Unit assumes and takes over the operation of the Unit Area within the time so named, this Plan of Unitization shall thereafter remain in force and effect until such time as the Unit is dissolved and abandoned as provided in Section XXV hereof."

The order of the Commission approving this Plan of Unitization shall be regarded as having become final at the end of the time allowed by law for any appeal therefrom, if no appeal is taken, or, if an appeal is taken, then upon the final determination of any such appeal.

The Unit on or before five (5) days after the Effective Date hereof shall submit to the County Clerk of Caddo County, Oklahoma, for filing, a written declaration signed by the Chairman and Secretary of the Operating Committee, setting forth

(a) The hour, day and year on which the Unit took over the operation of the Unit Area;

(b) A description or plat of the lands included within the Unit Area; and

(c) The cause number and date of the Commission order approving this Plan of Unitization, with an appro-

priate reference to such order and the files of the Commission for further information concerning this Plan of Unitization.

X

Unit Operator

Subject to the further provisions of this Plan of Unitization, operations in connection with the development and the operation of the Unit Area for Oil and Gas shall be carried on and conducted by a Unit Operator in accordance with the instructions of the Operating Committee.

The Unit Operator shall:

(a) Conduct all such operations in a good and workmanlike manner.

(b) Keep full, true and correct books, accounts and records of its operations hereunder which shall be made available for inspection at all reasonable times by any of the Lessees within the Unit Area.

(c) Mail to each Lessee on or before the 10th day of each calendar month a full, true and correct statement of all Unit Production during the preceding calendar month.

(d) Comply, to the extent of its operations within the Unit Area, with the Workmen's Compensation Laws of the State of Oklahoma and with all other valid and applicable federal and state laws and regulations.

(e) Carry such insurance as may be required by the Operating Committee.

(f) Keep the land and leases within the Unit Area free from liens and encumbrances occasioned by the operations of the Unit Operator save only the lien granted the Unit and the Unit Operator under this Plan of Unitization.

The Operating Committee may by the vote hereinbefore provided remove a Unit Operator at any time. A Unit Operator may resign only after giving the Operating Committee six months' written notice of its intention to resign, or sooner if a successor is selected and has assumed the duties of Unit Operator prior to the end

of such time. Upon the removal or resignation of a Unit Operator the Operating Committee shall designate a successor Unit Operator from among the Lessees within the Unit Area.

Phillips Petroleum Company is hereby designated as Unit Operator.

XI

Unit Expense

The Unit Operator in the first instance shall pay and discharge all cost and expense incurred in the development and operation of the Unit Area and in the conduct of the activities and affairs of the Unit. All such cost and expense incurred in the development and operation of the Unit Area shall be in accordance with the Accounting Procedure hereto attached, marked "Exhibit C" and made a part hereof. All other costs and expense shall be only such sums as are approved by the Operating Committee.

All such Unit Expense as it accrues shall be charged to the several Separately Owned Tracts in the Unit Area in proportion to the percentage of interest of such tracts in and to the Unit as set forth and shown in Part I of "Exhibit B" hereto attached.

Except as may be otherwise hereinafter specifically provided, a Lessee or Lessees obligated or responsible for the cost and expenses of operating a Separately Owned Tract for Oil and Gas in the absence of unitization shall, in the same proportion and to the same extent, be chargeable with and responsible for the payment of the Unit Expense charged against such Separately Owned Tract.

The Unit Operator shall on or before the last day of each calendar month render to each Lessee within the Unit Area an itemized statement of all charges and credits during the preceding month and of the amount due from or to each such Lessee with respect to each Separately Owned Tract. If the Unit Operator so elects, such state-

ment of account may also include a charge by way of an advance of the proportionate part of the estimated Unit Expense for the ensuing month chargeable to the Lessee against whom such statement is rendered, using as a basis therefor the budget hereinafter provided for. Except as may be otherwise provided herein, each Lessee chargeable with the payment thereof shall, within fifteen (15) days from the receipt of such statement, pay to the Unit Operator the amount thereof. If not paid when due, the unpaid balance shall bear interest at the rate of 6% per annum until paid. Payment of any such statement shall not prejudice the right of any Lessee to protest or question the correctness thereof; provided, the Unit Operator shall not be required to adjust any item of charge or credit unless a claim therefor has been presented in writing within six (6) months after the approval by the Operating Committee of the annual audit for the period in which the charge or credit was made.

Before or as soon as practical after the Effective Date hereof, the Operating Committee, acting in conjunction with the Unit Operator, shall prepare a budget of estimated Unit Expense for the remainder of the calendar year and on or before the first day of each December thereafter shall prepare a budget of estimated Unit Expense for the ensuing calendar year, which budgets shall set forth the estimated Unit Expense by quarterly periods. Unless otherwise specified in the budget, it shall be presumed for the purpose of advance billings as aforesaid, that the estimated Unit Expense for each month of a quarterly period shall be one-third (⅓) of the estimate for the quarterly period. Budgets so prepared shall be estimates only and shall be subject to adjustment and correction by the Operating Committee and Unit Operator from time to time whenever it shall appear that an adjustment or correction is proper. A copy of each such budget and adjusted budget shall be promptly furnished each Lessee within the Unit Area.

Any Lessee, other than an Unqualified Subscriber, who does not elect to pay its proportionate share of the Unit

Expense, shall not be personally obligated for the payment thereof, but the amount thereof or such portion thereof as such Lessee shall elect not to pay, together with interest thereon at the rate of 6% per annum, shall be carried and shall be payable, so far as such Lessee is concerned, as follows:

(a) So much of said charge as is made up of current operating costs, as distinguished from items of investment, together with interest thereon, shall be payable out of proceeds from all Unit Production to the credit of the interest or interests chargeable therewith.

(b) So much of said charge as is made up of items of investment, together with interest thereon, shall be payable out of 50% of the net proceeds of the Unit Production to the credit of the interest or interests chargeable therewith after deducting the charge for Operating costs under subparagraph (a) last above.

(c) All credits to any such Lessee on account of the sale or other disposal of surplus material or equipment or otherwise shall be applied against any such unpaid Unit Expense charged against such Lessee.

Amounts so carried as aforesaid, shall be billed to and paid by the Lessees who sign this Plan of Unitization as Unqualified Subscribers, in the proportion that the interest of each in the Unit bears to the total interests in the Unit of all of the Unqualified Subscribers to this Plan of Unitization, Lessees so paying the same shall be reimbursed therefor, together with interest thereon, as and when the amounts so carried and the interest thereon are collected from the Lessees or interests primarily chargeable therewith.

The Unit shall have a first and prior lien upon the leasehold interest (exclusive of a 1/8 royalty interest) in and to each Separately Owned Tract, the interest of the owners thereof in and to the Unit Production and all equipment in possession of the Unit, to secure the payment of the Unit Expense and other items of cost charged to and against such Separately Owned Tract, provided

such lien may be enforced as against overriding royalty, oil and gas payments, royalty interests in excess of a 1/8 of the production, or other interests which otherwise are not chargeable with such costs, only in the event the owner of the interest or interests primarily responsible fails to pay such Unit Expense when due, and the production to the credit thereof is insufficient for that purpose. In the event the owner of any royalty interest, overriding royalty, oil and gas payment or other interest which under the Plan of Unitization is not primarily responsible therefor pays any part of such Unit Expense for the purpose of protecting such interest or the amount of such Unit Expense in whole or in part is deducted from the Unit Production to the credit of such interest, the owner thereof shall, to the extent of such payment or deduction, be subrogated to all of the rights of the Unit and of the Unit Operator with respect to the interest or interests primarily chargeable with such Unit Expense. A one-eighth (1/8) part of the Unit Production allocated to each Separately Owned Tract shall in all events be regarded as royalty to be distributed to and among or the proceeds thereof paid to the royalty owners free and clear of all Unit Expense and free of any lien therefor. The lien hereinabove provided for shall be for the use, benefit and protection of Unit Operator or other Lessees or persons entitled to receive or share in the monies, the payment of which is secured thereby, and in the event of failure of the Unit to enforce such lien, the Unit Operator or other person entitled to the benefit thereof, shall be subrogated to the lien rights of the Unit, including the right of foreclosure.

In the event of a failure of any Lessee to pay its share of the Unit Expense when due, and also in the case of a Lessee who elects to be carried as aforesaid, the Unit Operator shall be entitled to take and market, or itself purchase the Unit Production to the credit of such Lessee or to the credit of the interest or interests chargeable with such Unit Expense, or to otherwise collect and re-

ceive the proceeds from the sale thereof, and shall apply all such sums so collected against the delinquent or unpaid Unit Expense due from such Lessee or interest, the balance of such proceeds, if any, to be paid to the Lessee or other person entitled thereto. The Unit Operator may likewise take any other credit due any such Lessee or interest and apply the same against sums due from such Lessee or interest for Unit Expense.

Any and all income and credits received by Unit Operator on account of Unit Operations hereunder, from whatever source received, shall currently be accounted for and credited to the Lessees or interests entitled to credit therefor.

XII

Initial Adjustment of Investment

Upon the Effective Date hereof the Unit shall assume control and management of the further development and operation of the Unit Area and, except as may be otherwise herein provided, each Lessee within the Unit Area shall deliver possession to the Unit Operator of (a) all wells within the Unit Area, (b) all lease and other operating equipment used in the operation of such wells, and (c) all production and well records and other pertinent data pertaining thereto.

(1) Completed Wells

All wells which as of the Effective Date are completed as producing wells in the Medrano Sand shall be taken over by the Unit, except that in the case of wells determined by the Operating Committee to be unnecessary to Unit operations, the owners thereof may upon request retain possession thereof for the purpose of completing the same in some other formation not a part of the Unit Area, provided, the owners thereof shall immediately cause the Medrano Sand to be sealed off in a manner satisfactory to the Operating Committee.

(2) Wells Being Drilled or Reconditioned

Any well being drilled, repaired, deepened or plugged back to the Medrano Sand as of the Effective Date hereof may be completed by the separate owner or owners thereof and if so completed as a producing well in the Medrano Sand, shall be taken over by the Unit except that in the case of wells determined by the Operating Committee to be unnecessary to Unit Operation, the possession thereof may be retained by the owners thereof under the circumstances and upon the conditions named in (1) last above.

(3) Casing, Tubing and Wellhead Connections

All casing, one string of tubing and wellhead connections in or on wells taken over by the Unit shall be treated and regarded as a part of such wells.

(4) Lease and Operating Equipment

As of the Effective Date hereof the Operating Committee shall determine what part of the lease and other operating equipment (exclusive of warehouses, lease houses, camps and office buildings) used in the operation of wells taken over by the Unit it considers necessary or desirable to take over and use in connection with the unitized development and operation of the Unit Area including, by way of example, but not thereby excluding, other equipment of a like or different kind, derricks, tank batteries, separators, rods, pumps, tubing in excess of one string, flow lines, water lines, gas lines, etc., which said lease and operating equipment (exclusive of warehouses, lease houses, camps and office buildings) shall be delivered to and taken over by the Unit. All lease and operating equipment not so taken over shall remain the separate property of the several owners thereof and may be used by said separate owners in the operation of wells producing from formations other than the Medrano Sand or reclaimed as such separate owners may desire. The acquisition of existing warehouses, lease houses, camps, or office buildings considered desirable to the operation and development of the Unit Area shall be by negotiation and sep-

arate contract of purchase with the owner or owners of such warehouses, lease houses, camps and office buildings.

(5) Adjustment of Well Investment -

(a) Each Separately Owned Tract on which is one or more wells taken over by the Unit shall be given credit for the value assigned to such well or wells as follows: wells listed in "Exhibit D" hereto attached shall have the assigned value therein shown; wells not listed in "Exhibit D" shall be assigned a value determined in the same manner as was used in determining the values assigned to the wells listed in "Exhibit D".

(b) Each Separately Owned Tract within the Unit Area shall thereupon be charged with the total value of all such wells in proportion to such tract's percentage of interest in and to the Unit as shown in Part I of "Exhibit B" hereto attached, less the amount of the credit due such tract under (a) last above, resulting in either a net debit or a net credit with respect to each Separately Owned Tract.

(c) The amount of any net debit chargeable against a Separately Owned Tract under (b) above shall be payable by the Lessee or Lessees of such tract out of 10% of 7/8 of the Unit Production of oil allocated to such tract if such tract has a credit under (a) above, or 25% of 7/8 of said oil if said tract has no credit under (a) above. The oil applicable to the oil payment with respect to each Separately Owned Tract having a net debit shall be sold by the Unit Operator, at not less than the prevailing market price, for the account of the Lessees of Separately Owned Tracts having net credits under (b) above until such time as the accumulated proceeds thereof equal the amount of such net debit. The Lessee or Lessees of each Separately Owned Tract having a net debit shall have the right to designate the purchaser to whom said oil shall be sold, provided the purchaser so designated will take and purchase said oil at the prevailing market price. Amounts collected by the Unit Operator under the provisions of this paragraph shall be paid by said Unit Operator to the

Lessees of Separately Owned Tracts having net credits under (b) above in proportion to the percentages which the net credit due each bears to the net credit due all such Lessees. The amounts of the debits and credits under (a) and (b) above in respect to Separately Owned Tracts held by the same Lessee may, at the option of such Lessee, be grouped for the purpose of arriving at a combined net debit for all such tracts payable out of such fraction of 7/8 of the Unit Production of oil allocated to all such tracts as will result in the application of the same amount of oil each month to the payment of said combined net debit as would have been applied to the payment of the separate net debits against said several tracts in the absence of such grouping.

(6) Accounting for Lease and Operating Equipment

An accounting for the lease and operating equipment so transferred to and taken over by the Unit shall be had as between the owners thereof, and all Lessees within the Unit Area on the basis of the value thereof determined in accordance with Section IV of the accounting procedure hereto attached marked "Exhibit C", plus a reasonable allowance for the cost of installation, if installed, to be determined by the Operating Committee, and proper charges and credits entered against the several Separately Owned Tracts, all to the end that on and after the Effective Date hereof each of the several Lessees within the Unit Area instead of separately owning the equipment delivered to the Unit by such Lessees, will have exchanged the same for an undivided interest in and to all the equipment so taken over and acquired by the Unit and will have paid or have been paid, as the case may be, for any difference in value. The amount of any net charge made against a Separately Owned Tract under this paragraph shall be treated and regarded in all respects the same as any other charge for Unit Expense chargeable to such tract.

XIII.

Oil in Lease Tankage as of Effective Date

A proper and timely gauge shall be made of all lease or other tanks taken over by the Unit to ascertain the amount of oil in such tanks at the time the Unit assumes and takes over the development and operation of the Unit Area. So much of such oil as is legally produced shall remain and be the property of the parties entitled thereto had not the Unit been created, and upon request, shall be delivered in kind to persons entitled thereto, or in the absence of such request, shall be sold by the Unit Operator for the credit of such persons at not less than the prevailing market price and the proceeds thereof paid to such persons.

XIV

Settlement with Respect to Gas Produced and Underproduction of Gas Prior to Effective Date

A settlement with respect to gas produced and underproduction of gas prior to the Effective Date shall be made as follows:

(a) Each Separately Owned Tract having underproduction to its credit as of the Effective Date shall be given credit for such underproduction, less so much thereof as may have accumulated between November 1, 1946, and the Effective Date, on the basis of 95% of what the Lessee or Lessees of each such tract would have received and been paid therefor, less seller's cost of dehydration, had said gas been produced and sold currently during the period or periods in which such underproduction accumulated.

(b) Each Separately Owned Tract shall be charged with the sales of gas from such tract during the four months' period from November 1, 1945, to March 1, 1946, plus any overproduction charged against such tract as of the Effective Date other than overproduction as may have accumulated during said four months' period, on the basis of 7/8 of 95% of the average price, less seller's cost of dehydra-

tion, received for gas sold from such tract during said four months' period from November 1, 1945 to March 1, 1946.

(c) Unit Operator shall pay to the Lessee or Lessees of each Separately Owned Tract having a net credit after deducting the amount of the charge under (b) from the credit under (a) the amount of such net credit.

(d) The Lessee or Lessees of each Separately Owned Tract against which there is a net charge after deducting the amount of the credit under (a) from the amount of the charge under (b) shall be charged with and shall pay to the Unit Operator the amount of said net charge in the same manner and on the same terms and conditions as if said net charge was a charge for Unit Expense against such Separately Owned Tract.

(e) If the amounts collected under (d) are less than the amounts paid under (c) the difference shall be charged against the several Separately Owned Tracts within the Unit Area in proportion to their respective percentages of interest as set out in Part I of Exhibit B hereof as an item of Unit Expense. If the amounts collected under (d) are more than the amount paid out under (c), the difference shall be credited to the several Separately Owned Tracts and paid to the Lessees thereof in proportion to the percentages of interest of such tracts as set out in Part I of Exhibit B hereof.

(f) The amounts credited to each Separately Owned Tract and paid to the Lessee or Lessees thereof under (c) and (e) shall be distributed and paid by such Lessee or Lessees to the owners of the Oil and Gas Rights in and to such tract, including the Royalty Owners, in the same proportion and to the same extent that they share in the Unit Production allocated to such tract as of the Effective Date hereof.

(g) The underproduction and overproduction of gas and the amount of sales of gas from any Separately Owned Tract at any time or during any period shall be determined from the books and records of the Commission.

XV

Plan of Operation

To the end that the quantity of Oil and Gas ultimately recoverable from the Unit Area may be substantially increased and waste prevented, the further development and operation of the Unit Area, from and after the Effective Date hereof, shall be conducted by the application to the Unit Area of the following unitized method of operation:

(a) As soon as practical after the Effective Date hereof, the Unit shall make the necessary preparations therefor and with diligence and in accordance with good engineering and production practices engage in pressure maintenance or repressuring operations through the return of gas to the reservoir to the extent and in the manner best calculated to efficiently and without waste result in the greatest ultimate recovery of Oil and Gas from the Unit Area. In so doing, the Unit is authorized to construct, purchase or otherwise acquire and operate such gasoline plants, processing plants or compressor plants and other facilities as may in the best judgment of the Operating Committee be desirable for that purpose, or is authorized, should it so elect, to contract with the owners of an individually owned plant or plants and facilities to render in whole or in part the desired services in connection therewith.

(b) The oil produced from the Unit Area shall be produced from those wells in the Unit Area from which the same can be obtained with the smallest loss or dissipation of reservoir energy reasonably possible under practical operating conditions as they may exist from time to time.

(c) Gas wells and wells which produce oil with gas-oil ratios found to be excessive in relation to the gas-oil ratios of other wells producing oil from the Unit Area shall be shut in or the production therefrom restricted in such manner as to make the most effective utilization of the gas energy of the reservoir reasonably possible under practical operating conditions as they may exist from time to time.

(d) Production of Oil and Gas from different parts of the Unit Area shall be regulated in such manner as to retard, control or effectively utilize water encroachment, in such manner and to such extent as may be found reasonably possible and economically advisable from time to time.

(e) Gas (other than gas produced in connection with the production of oil) shall be produced from the Unit Area only at such time or times and in such manner as in the judgment of the Operating Committee such gas may be produced without materially decreasing the quantity of oil economically recoverable from the Unit Area.

(f) Such other unitized method or methods of operation as may from time to time be determined by the Operating Committee to be feasible, necessary or desirable to efficiently and substantially increase the ultimate recovery of Oil and Gas from the Unit Area, provided the estimated additional cost thereof does not exceed the value of the additional Oil and Gas to be so recovered.

Nothing herein contained shall prevent the Unit from abandoning or changing in whole or in part any particular method or methods of operation, including the pressure maintenance or repressuring operations required under (a) above, if and in the event at such time, and to the extent that any such method of operation as applied to the Unit Area is, in the best judgment of the Operating Committee, no longer in accord with good engineering or production practices.

XVI

Right to Information Regarding Unit Operations

Each and all Lessees within the Unit Area shall have access to the entire Unit Area at all reasonable times to inspect and observe operations of every kind and character on the property, and shall have access at all reasonable times to any and all information pertaining to wells drilled, production secured, marketing of Unit Production and to the books, records and vouchers relating to the

operation of the Unit Area. Unit Operator shall, upon request, furnish to any such lessee tank tables, daily gauge and run tickets and reports of stock on hand at the first of each month and any other pertinent information pertaining to the Unit Area or development and operation thereof. All of the rights herein granted shall apply with equal force to the construction and operation by the Unit of any repressuring or pressure maintenance plant or other facilities in connection therewith.

XVII

Liability

No member of the Operating Committee or any other committee shall be personally liable or individually responsible for any act, error, default or omission as a member of such committee or committees.

Neither the Unit nor the Unit Operator shall be liable or responsible under any of the provisions of this Plan of Unitization for any acts or omissions resulting from causes beyond the control of the Unit or such Unit Operator, or other causes which by the exercise of due diligence could not have been prevented or overcome.

Unit Operator shall not be liable or responsible for any damage to the Unit Area or the property, equipment or facilities used in the development and operation thereof, or for the loss of any production arising out of its operation of the Unit Area, except only for bad faith or gross negligence in connection therewith.

If and in the event, notwithstanding the foregoing provisions of this section, the Unit, the Unit Operator or any member of the Operating Committee is held liable by a court of competent jurisdiction for any matter or thing for which it is herein provided the Unit or person so named shall not be liable, the amount of such liability as finally determined shall thereupon be treated, regarded and paid as an item of Unit Expense.

XVIII

Change of Interest

All transfers, assignments and conveyances of any interest in, or with respect to, any of the Separately Owned Tracts within the Unit Area shall be subject to the terms, provisions and conditions of this Plan of Unitization, but shall not be binding on the Unit or the Unit Operator unless and until a photostatic or certified copy of the recorded instrument evidencing such change of ownership has been delivered to the Unit Operator. Each such transfer, assignment or conveyance, whether so stating or not, shall operate to impose upon the person or persons acquiring such interest the obligation of the assignor or grantor with respect to the interest so transferred and shall likewise operate to give and grant to the person or persons acquiring such interest all benefit attributable hereunder to such interest.

XIX

Audits

The Operating Committee shall cause an audit to be made of the books, accounts and records of the Unit Operator in respect to matters pertaining to the Unit and the operation of the Unit Area at least once each year and shall furnish a copy thereof to each of the Lessees within the Unit Area. Each such audit shall cover the period intervening since the last audit. The audit may be made by an auditor or auditing committee from the accounting staff of one or more of the Lessees within the Unit Area, or by an independent auditor or auditors employed by the Unit to make such audit.

XX

Rights of Way

The Unit shall have a servitude and right of way on, over and across all of the lands in the Unit Area for the

purpose of laying, constructing, building, using and maintaining, operating, changing, repairing and removing pipe lines, tanks, telegraph and telephone lines, water lines, and other facilities for the development and operation of the Unit Area for Oil and Gas and for the gathering, handling and disposal of the Unit Production; provided, the Unit shall pay all damages to growing crops, timber, fences, improvements and structures on the land resulting from the exercise of the rights and privileges granted to it in this section.

XXI

Claims, Suits and Judgments Against Individual Owners of Unit Area

In the event claim is made against any of the owners of the Unit Area or any of such owners are sued on account of any matter or thing growing out of the development and operation of the Unit Area by the Unit and over which such owner or owners have no control because of the rights, powers and duties herein granted the Unit, said owner or owners shall immediately notify the Operating Committee in writing of such claim or suit. The Operating Committee shall assume and take over the further handling of such claim or suit and in pursuance thereof may select an attorney or attorneys for that purpose, who, subject to the directions of the Operating Committee, shall have the exclusive right to direct and control the settlement or defense thereof. Should such claim be settled, final judgment be entered against any such defendant or defendants upon said cause of action and any such defendant is required to pay or satisfy such judgment or expense of litigation in whole or in part, the amount of such settlement or judgment shall be treated, regarded and paid as any other item of Unit Expense. Nothing herein contained shall apply to or relieve any such owner or owners of liability which may have accrued prior to the effective date of this Plan of Unitization.

XXII

Title Information

Upon request of either the Operating Committee or the Unit Operator, the Lessees of the several Separately Owned Tracts shall furnish and make available to the Unit or the Unit Operator, as the case may be, an abstract brought to the date of the request, together with all other title information in the possession and files of such Lessees, title opinions, original or true copies of all leases, assignments, contracts, curative matter and all other data and information pertaining to or otherwise affecting titles to the Oil and Gas Rights in and to the Unit Area.

XXIII

Other Formations

It is understood that the common source of supply described herein as the Unit Area, namely, the Medrano Sand of the West Cement Field, underlies and may overlie other reservoirs or common sources of supply of Oil and Gas not a part of the aforesaid Medrano Sand or a part of the Unit Area of the Unit created hereby. Except as specifically provided in this Plan of Unitization, all rights of any and all persons in and to such other reservoirs or common sources of supply of Oil and Gas and the production therefrom, together with the right of ingress and egress and the use of the surface of the Unit Area for the exploration, development and operation of such other reservoirs or common sources of supply of Oil and Gas, are expressly reserved unto the separate owners thereof and shall remain unaffected by the creation of the Unit and the adoption of this Plan of Unitization, all to the same extent as if this Plan of Unitization had not been adopted except that in the exercise of such rights the owners thereof shall have due regard for the rights granted the Unit with respect to its operations hereunder. Likewise, any reference in this Plan of Unitization to a Separately Owned Tract or to the Unit Area, although in

general terms broad enough to include the surface and all underlying common sources of supply of Oil and Gas, shall have reference to the lands embraced within such Separately Owned Tract and within the Unit Area only in relation to the Medrano Sand of the West Cement Field.

XXIV

Abandonment of Wells

If the Operating Committee at any time desires to abandon any well completed in the Medrano Sand and salvage the casing and other equipment that is a part of the well, the Lessee or Lessees of the Separately Owned Tract on which such well is located shall be notified in writing of such decision and shall have and be granted thirty (30) days from receipt of such notice within which to elect to take over such well for the purpose of completing the same in some other formation not a part of the Unit Area. Any such Lessee electing to take over such a well shall pay the salvage value of the casing and other equipment in and on the well, determined in accordance with Section IV of the accounting procedure hereto attached marked "Exhibit C", and shall agree to assume full responsibility for the proper plugging and abandonment thereof at such time as the well is ultimately abandoned. No such well shall be operated or used for the production of Oil and Gas from the Unit Area and to that end the Lessee taking over such a well shall immediately cause the Medrano Sand in such well to be sealed off in a manner satisfactory to the Operating Committee. In the event the Lessee or Lessees of such a Separately Owned Tract do not elect to take over such well, the Unit Operator shall proceed to properly plug and abandon the same and salvage the casing and other equipment therefrom.

XXV

Abandonment of Operations and Dissolution of Unit

At such time as it is determined by the Operating Committee that Unit Production can no longer be produced

from the Unit Area in paying quantities the further development and operation of the Unit Area by the Unit shall be abandoned, the Unit dissolved and its affairs wound up.

Upon abandonment of Unit Operations,

(a) All rights in and to the several Separately Owned Tracts shall revert to the separate owners and Lessees thereof;

(b) The owner or Lessee of a Separately Owned Tract desiring to take over and continue to operate a well located on such Separately Owned Tract may do so by paying the salvage value of the casing and other equipment in and on the well determined in accordance with Section IV of the accounting procedure hereto attached marked "Exhibit C" and by agreeing to properly plug and abandon the well at such time as it is ultimately abandoned;

(c) With respect to all wells not taken over by the owner or Lessees of the Separately Owned Tracts as aforesaid, the Unit Operator shall salvage so much of the casing and other equipment therein as can economically and reasonably be salvaged and shall cause such well to be properly plugged and abandoned;

(d) The salvaging, liquidation or other distribution of assets and properties used in the operation of the Unit Area shall be in a manner determined by the Operating Committee; provided, any Lessee desiring to take its share of the physical assets or any portion thereof in kind may do so. All such assets and property shall belong to the several Lessees in proportion to their respective interests in the Unit.

At such time as the Unit Operations are abandoned and the affairs of the Unit wound up, the Unit shall submit for filing a declaration to that effect with the Secretary of the Corporation Commission and with the County Clerk of Caddo County, Oklahoma, whereupon the rights, powers and duties of the Unit shall be at an end.

XXVI

Amendment to Plan of Unitization and Enlargement of Unit

Any amendment of this Plan of Unitization or any enlargement of the Unit or Unit Area shall be in accordance with the provisions of Sections 11 and 12 of House Bill 339 of the 1945 Legislature of the State of Oklahoma or any amendment thereto.

XXVII

Subscribers

Provision is made below for the signing of this Plan of Unitization by Lessees within the Unit Area who wish to expressly signify their agreement to the terms, provisions and conditions hereof. Such Lessees may sign either as Unqualified or Qualified Subscribers. Those signing as Unqualified Subscribers agree to all the terms, provisions and conditions hereof, including the agreement to participate in carrying the Lessees who elect to be carried under the provisions of Section XI. Those signing as Qualified Subscribers agree to all the terms, provisions and conditions hereof, except that they reserve the right to be carried in respect to the payment of Unit Expense as is provided in Section XI and do not agree to participate in carrying the other Lessees who elect to be carried under the terms of said Section. This Plan of Unitization may be so signed by the subscribers hereto at any time, the original of which shall at all times from and after the approval hereof by the Commission remain on file in the office of the Secretary of the Commission. In lieu of signing the original of this Plan of Unitization, any Lessee desiring to subscribe hereto, either as an Unqualified or Qualified Subscriber, may do so by separate instrument filed with the Secretary of the Commission, all with the same effect as if such Lessees signed the original.

The signing hereof by any Lessee shall be binding upon the heirs, personal representatives, successors and assigns of such Lessees.

The signing hereof by each of the subscribers hereto is conditioned upon the approval of this Plan of Unitization by the Corporation Commission.

The signing hereof by the Unqualified Subscribers is further conditioned upon the signing hereof by Unqualified Subscribers who, under this Plan of Unitization based on present lease ownership, will own sixty-five per cent (65%) or more in interest in the Unit.

UNQUALIFIED SUBSCRIBERS:

AMERADA PETROLEUM CORPORATION

By_____

Attest:

_____

ANDERSON-PRICHARD OIL CORPORATION

By_____

Attest:

_____

CITIES SERVICE OIL COMPANY

By_____

Attest:

_____

FOSTER PETROLEUM CORPORATION

By_____

Attest:

_____

GULF OIL CORPORATION

By_____

Attest:

_____

MAGNOLIA PETROLEUM COMPANY

By_____

Attest:

_____

[Continued on p. 141]

PALMER OIL CORPORATION
By _____

Attest:
_____

PHILLIPS PETROLEUM COMPANY
By _____

Attest:
_____

RAY STEPHENS, INC.
By _____

Attest:
_____

STEPHENS PETROLEUM COMPANY
By _____

Attest:
_____

SUNRAY OIL CORPORATION
By _____

Attest:
_____

[Continued on p. 142]

QUALIFIED SUBSCRIBERS:

_____

By _____

Attest:

_____

_____

By _____

Attest:

_____

_____

By _____

Attest:

_____

_____

_____

_____

(Here follows 1 map, Exhibit A, fol. 144)

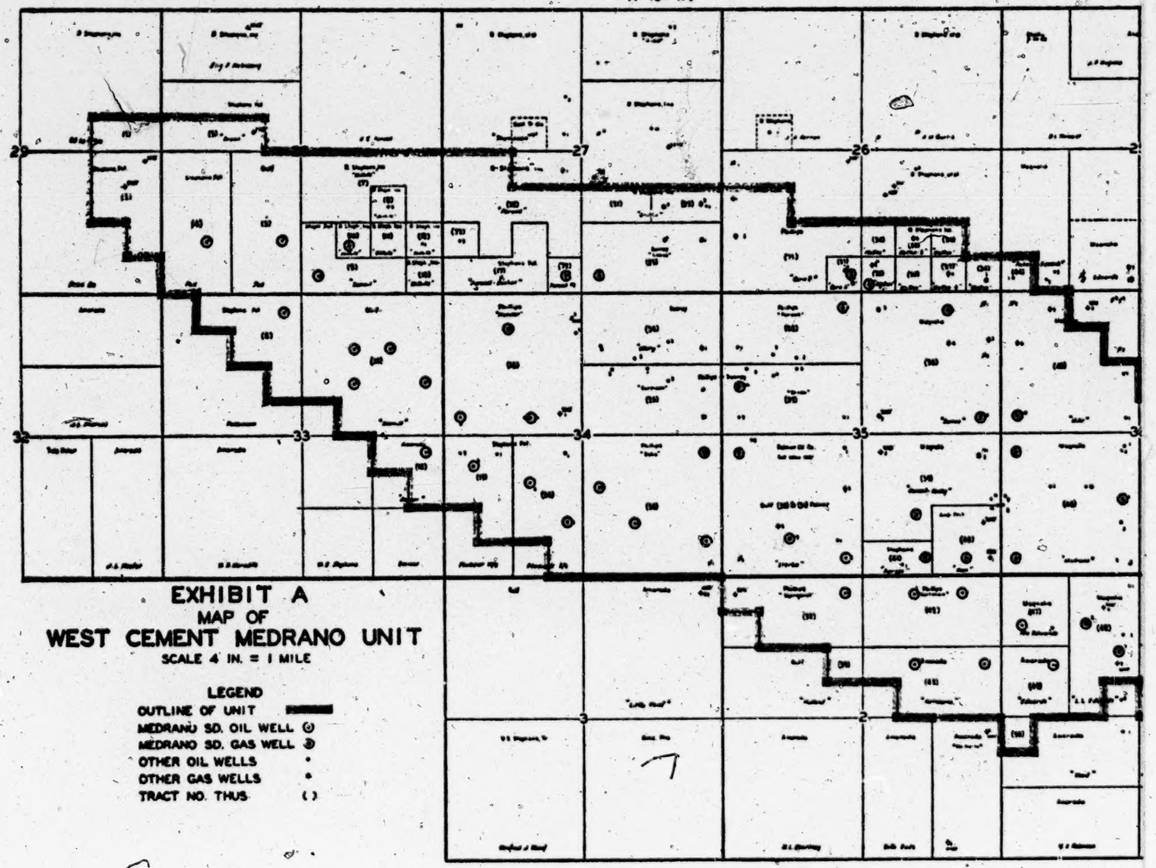

EXHIBIT A
MAP OF
WEST CEMENT MEDRANO UNIT
SCALE 4 IN. = 1 MILE

LEGEND
OUTLINE OF UNIT
MEDRANO SD. OIL WELL
MEDRANO SD. GAS WELL
OTHER OIL WELLS
OTHER GAS WELLS
TRACT NO. THUS ( )

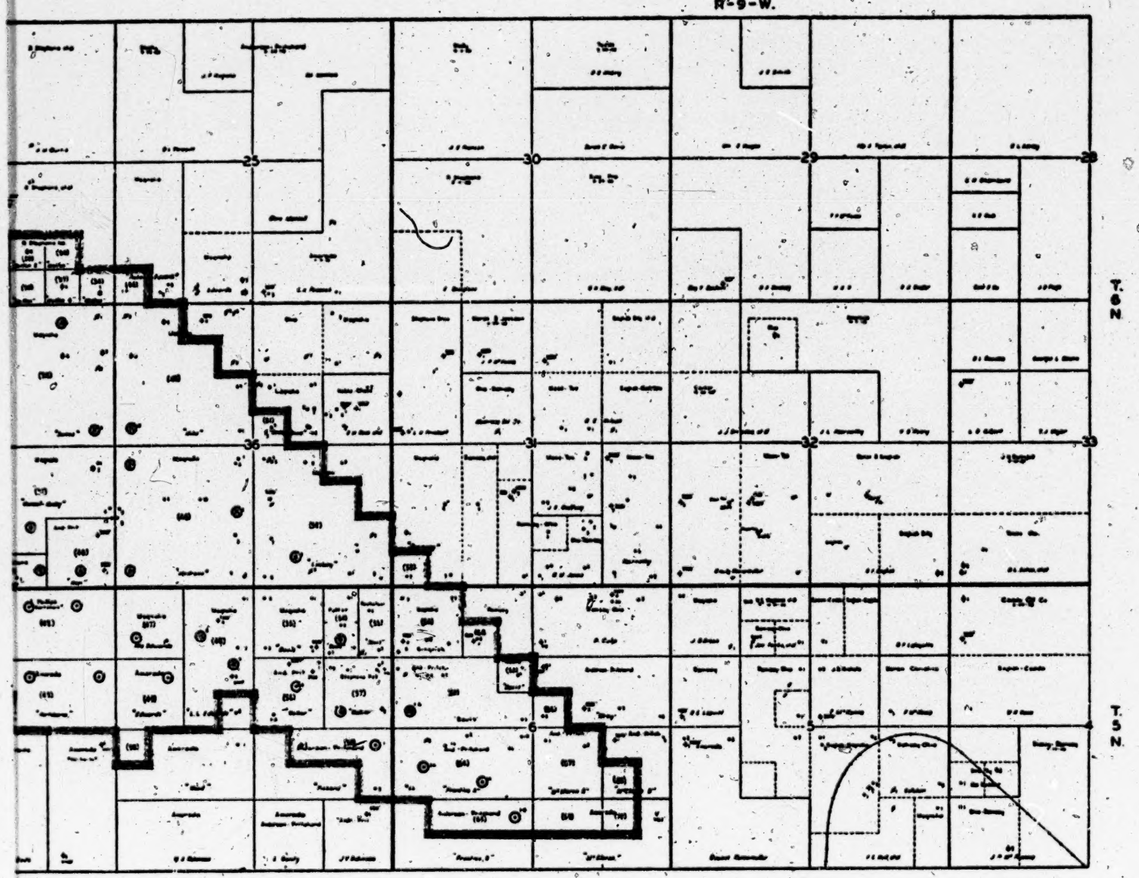

EXHIBIT "D"

Operator, Lease and Well	Tract Number	Assigned Value of Well
Amerada Petroleum Corporation		
Beemer #1	15	$59,038
Edwards #1	49	53,899
Hartshorn #1	43	57,995
Hartshorn #2	43	58,986
Anderson-Prichard Oil Corporation		
Davis #1-A	62	20,483
Hays #1	40	20,387
Pickard #1	58	51,198
Prentice "A" #3	64	52,240
Prentice "A" #4	64	50,924
Prentice "B" #1	65	53,686
Walker #2	56	52,168
Gulf Oil Corporation		
Pell #1	5	50,125
Sherritt #1	14	55,586
Sherritt #2	14	52,920
Sherritt #3	14	52,929
Sherritt #4	14	59,073
Magnolia Petroleum Company		
I. Edwards #2	47	54,085
L. L. Edwards #5	48	20,955
L. L. Edwards #7	48	20,869
Cement-Henley #5	39	20,185
Lindsay #12	52	17,323
Medrano #6	46	16,632
Medrano #7	46	14,993
Medrano #11	46	19,458
Niles #10	45	13,826
Sames #6	38	14,022
Sames #8	38	13,666
Palmer Oil Corporation		
Sterba #3	31	17,730
Sterba #4	31	55,064
Sterba #7	31	55,126
Phillips Petroleum Company		
Farwell #4	28	14,494
Fletcher #5	18	17,968
Fletcher #6	18	54,832
Fletcher #7	18	49,154
Garn "A" #5	27	14,188
Hartshorn #1	42	51,693
Hartshorn #2	42	54,989
Margaret #1	32	56,908
Oaks #1	26	18,186
Oaks #2	26	53,835
Oaks #3	26	55,329
Oaks #4	26	53,771
Potter		
Davis #1	54	19,032

EXHIBIT "D"—Continued

Operator, Lease and Well	Tract Number	Assigned Value of Well
Ray Stephens, Inc.		
Melton 1, #1	36	14,319
Wilhite #3	10	19,116
Farwell #2	16	15,812
Stephens Petroleum Company		
Pierson #1	41	21,797
Plummer W/2, #3	19	57,669
Plummer E/2, #4	20	56,107
Plummer E/2, #5	20	57,663
Pohleman #1	6	56,837
Samwill #1	9	50,090
Pell #1	4	56,625
Walker #1	57	57,834
Sunray Oil Corporation		
Dixon #1-A	29	16,376
Loose #3	23	15,376
Total		$2,165,571

EXHIBIT "B"

Part II

For the purpose of this exhibit:

(a) The following amounts of the Unit Production of Oil shall be regarded as *"Normal Production"* for the years shown opposite the amounts so named:

Year Following Effective Date	Daily Average in Barrels
1st year	5,225 Barrels
2nd year	5,075 "
3rd year	4,925 "
4th year	4,775 "
5th year	4,775 "
6th year	4,203 "
7th year	3,872 "
8th year	3,788 "

(b) All Unit Production of Oil in excess of said Normal Production shall be regarded as *"Excess Production"*.

(c) *"Time of Acceleration"* shall mean and include the time from the Effective Date to the end of five consecutive periods, each consisting of 12 calendar months, with the exception that any month shall not be counted as a month fixing the term of each such period if the Unit Production of Oil during such month is less than the Normal Production as a sole and direct consequence of a statewide proration order of the Corporation Commission. The five periods aforesaid shall be designated consecutively as Periods 1, 2, 3, 4 and 5.

(d) *"Time of Deceleration"* shall mean and include the time from the end of the Time of Acceleration and continuing until such time as the total number of additional barrels of Oil allocated to Separately Owned Tracts numbered 56, 57, 58, 64 and 65 during the Time of Acceleration as hereinafter provided, is offset by a like number of barrels of Oil allocated to the other Separately Owned Tracts during such Time of Deceleration, as hereinafter provided.

During the Time of Acceleration the Normal Production of Oil as hereinabove defined shall be allocated to all the several Separately Owned Tracts within the Unit Area in proportion to their respective percentages of interest shown in Part I of this Exhibit.

The Excess Production, if any, in any month during the Time of Acceleration and if sufficient for that purpose, shall be allocated to Separately Owned Tracts numbered 56, 57, 58, 64 and 65 in such amounts as to allocate to each such Separately Owned Tract the following amounts of Oil in excess of the number of barrels of Normal Production allocated to such Separatey Owned Tracts.

Number of Period	Percent in Excess of Normal
1	100%
2	75%
3	50%
4	25%
5	10%

If the Excess Production in any month during the Time of acceleration exceeds the amount required to satisfy the aforesaid increased allocations to the 5 Separately Owned Tracts last hereinabove named, the excess shall be allocated to all of the Several Separately Owned Tracts within the Unit Area in proportion to their respective percentages of interest as shown in Part I of this Exhibit.

If the Excess Production, if any, in any month during the Time of Acceleration is not sufficient to satisfy in full the aforesaid increased allocations to the 5 Separately Owned Tracts hereinabove named, then and in that event the amount of such Excess Production shall be allocated to said 5 Separately Owned Tracts in the proportion that the percentage of interest of each such tract bears to the sum of the percentages of interest of all of said 5 Tracts, as shown in Part I of this Exhibit.

During the Time of Deceleration the amount of the Unit Production of Oil allocated each month to the 5 Separately Owned Tracts hereinabove specifically named, shall be 50% of their respective percentages of interest as shown in Part I of this Exhibit, until such time as the total accumulated number of barrels of Oil so withheld from such tracts by reason of said 50% reduction in percentage shall exactly equal the total accumulated number of additional barrels of Oil allocated to said tracts by reason of the special increase in allocation granted such tracts during the Time of Acceleration as hereinabove provided. The Unit Production of Oil so withheld from said 5 Separately Owned Tracts hereinabove specifically named by reason of said 50% reduction in the percentage allocation to such tracts shall be allocated to the other Separately Owned Tracts in the Unit Area, exclusive of the 5 tracts hereinabove specifically named, in the proportion that the percentages of interest of each bears to the sum of the percentages of interest of all such other tracts, exclusive of the 5 specifically named tracts, as shown in Part I of this Exhibit.

After the End of the Time of Deceleration all Unit Production shall be allocated to all the several Separately

Owned Tracts within the Unit Area in proportion to their respective percentages of interest as shown in Part I of this Exhibit.

EXHIBIT "C"

Accounting Procedure

The term "joint property" as herein used shall be construed to mean the Unit Area covered by the Plan of Unitization to which this "Accounting Procedure" is attached, together with any processing or other plants and facilities used in the development and operation of such Unit Area.

The term "Operator" as herein used shall be construed to mean the Unit Operator designated to conduct the development and operation of the joint property for the joint account.

I—Development and Operating Charges

Subject to limitations hereinafter prescribed, Operator shall charge the joint account with the following items:

(1) Delay or other rentals, when such rentals are paid by Operator for the joint account.

(2) Labor, teaming and other services necessary for the development, maintenance and operation of the joint property.

(3) Materials, equipment and supplies purchased or furnished by Operator from its warehouse stocks or from its other leases for use on the joint property. Insofar as is practical and consistent with efficient and economical operation, only such materials shall be purchased for or transferred to the joint property as are required for immediate use, and the accumulation of warehouse or lease stock on the joint property shall be avoided.

(4) Moving materials to the joint property from vendor's or from Operator's warehouse in the district or from other properties of Operator, but in either of the last events no charge shall be made to the joint account

for a distance greater than the distance from the nearest reliable supply store or railway receiving point.

(5) Moving surplus materials from the joint property to outside vendees, if sold f. o. b. destination, or minor returns to Operator's warehouse or other storage point. No charge shall be made to the joint account for moving major surplus materials to Operator's warehouse or other storage point for a distance greater than the distance to the nearest reliable supply store or railway receiving point, except by authority of the Operating Committee; and no charge shall be made to the joint account for moving materials to other properties belonging to operator, except by authority of the Operating Committee.

(6) Use of and service by Operator's exclusively owned equipment and utilities as provided in Paragraph (6) of Section II: "Basis of Charges to Joint Account."

(7) Damages or losses incurred by fire, flood, storm or from any other cause not controllable by Operator through the exercise of reasonable diligence. Operator shall furnish the Operating Committee written notice of damages or losses incurred by fire, storm, flood or other natural or accidental causes as soon as practicable after report of the same has been received by Operator.

(8) Expenses of litigation, liens, judgments and liquidated claims involving the joint property or incident to its development and operation. Actual expenses incurred by Operator in securing evidence pertaining to the joint property shall be a proper charge against the joint account.

(a) When any case, by prior agreement, is handled by Operator's legal staff, thereby eliminating the retaining of outside counsel, a charge commensurate with the cost of services rendered may be made to the joint account. Charges of this nature shall not be rendered until the Operating Committee has approved the amount thereof.

(b) Fees and expenses of outside attorneys shall not be charged to the joint account except where the employ-

ment of such outside attorneys is authorized by the Operating Committee.

(9) All taxes paid for the benefit of the parties in interest including ad valorem, property, gross production, occupation and any other taxes assessed against the jointly-owned properties, the production therefrom or the operations thereon.

(10) Insurance:

(a) Premiums paid for insurance carried for the benefit of the joint account together with all expenditures incurred and paid in settlement of any and all losses, claims, damages, judgments and other expenses, including legal services, not recovered from insurance carrier.

(b) If no insurance is required to be carried, all actual expenditures incurred and paid by Operator in settlement of any and all losses, claims, damages, judgments and any other expenses, including legal services, shall be charged to the joint account.

(11) Overhead:

In lieu of any charge for the salaries and expense of officers and employees of Operator other than employees directly assigned to the operation of the joint property and employees performing special work pursuant to authority of the Operating Committee, and, in lieu of any charge for office and camp expense other than the expense of a field office or camp, if any, required for the operation of the joint property, the Operator shall have the right to charge the joint account with the following overhead charges:

(a) $150.00 per month for each drilling well, beginning on the date the well is spudded and terminating when it is on production or is plugged, as the case may be, except that no charge shall be made during suspension of drilling operations for fifteen (15) or more consecutive days.

(b) $50.00 per well per month for the first ten (10) producing wells.

(c) $40.00 per well per month for the second ten (10) producing wells.

(d) $25.00 per well per month for all producing wells over twenty (20).

(e) $20.00 per well per month for injection wells.

(f) An allowance to be agreed upon between the Operator and Operating Committee with respect to the construction and operation of any gas injection plant and facilities if and when the construction and operation thereof is authorized.

In connection with overhead charges, the status of wells shall be as follows:

(1) Producing gas wells shall be included in overhead schedule the same as producing oil wells.

(2) Wells permanently shut down but on which plugging operations are deferred, shall be dropped from overhead schedule at the time the shutdown is effected. When such wells are plugged, overhead shall be charged at the producing well rate during the time required for plugging operation.

(3) Wells being plugged back or drilled deeper shall be included in overhead schedule the same as drilling wells.

(4) If and when a well is temporarily shut down (other than for proration) and not produced or worked upon for a period of a full calendar month, it shall not be included on the overhead schedule for such month.

(5) Salt water disposal wells shall not be included in overhead schedule.

The above specific overhead rates are subject to adjustment and shall be amended from time to time by agreement between Operator and the Operating Committee if, in practice, they are found to be insufficient or excessive.

(12) Warehouse Handling Charges: None.

(13) Any other expenditures incurred by Operator for the necessary and proper development, maintenance, and operation of the joint property, except that Operator shall not charge the joint account with any expenditure or contribution made by Operator towards employes'

stock purchase plan, group life insurance, pension, retirement, or bonus, other than such expenditures or contributions imposed or assessed by governmental authority.

II—Basis of Charges to Joint Account

(1) Outside Purchases: All materials and equipment purchased and all service procured from outside sources shall be charged at their actual cost to Operator, after deducting any and all trade or cash discounts actually allowed off invoices, or received by Operator.

(2) New materials furnished by Operator (Condition "A"):

New materials transferred to the joint property from Operator's warehouse or other properties shall be priced f. o. b. the nearest supply store or railway receiving point at replacement cost of the same kind of materials. This will include large equipment such as tanks, rigs, pumps, boilers and engines. All tubular goods (2" or over) shall be charged on the basis of mill shipment or carload price. Other materials, where the replacement cost cannot be readily ascertained, may, for the purposes of consistency and convenience, be charged on the basis of a reputable supply company's preferential list price f. o. b nearest supply store or railway receiving point tc the joint property prevailing on the date of transfer of the materials to the joint property.

In determining the value of any transferred materials, all special and preferential discounts shall be allowed but the regular cash discount shall not be considered.

(3) Secondhand materials furnished by Operator (Conditions "B" and "C"):

(a) Tubular goods (2" and over), fittings, machinery and other equipment which is in sound and serviceable conditon at date of transfer, will be classed as condition "B" and charged at 75% of the price of new materials, in accordance with the provisions of Paragraph (2) above.

(b) Tanks, derricks, and buildings or other equipment

involving erection costs shall be charged on a basis not to exceed 75% of knocked-down new price for similar materials.

(c) Other secondhand materials, such as units of machinery or other equipment that is serviceable, but substantially not good enough to be considered first-class secondhand material when transferred to the joint property, shall be classed as condition "C" and charged at 50% of the new price.

(d) There may also be cases where some items of equipment, due to their unusual condition, should be fairly and equitably priced by Operator.

(4) Warranty of Materials Furnished by Operator: Operator does not warrant the materials furnished from its warehouse or other properties beyond or back of the dealers' or manufacturer's guaranty, and in case of defective materials, credits shall not be passed until adjustment has been received by Operator from the manufacturers or their agents.

(5) If materials required are not available in Operator's surplus stocks, Operator shall whenever in its judgment it is practical to do so, give to other lessees within the Unit Area opportunity of furnishing the materials required in proportion to their interest, provided that the same can be furnished at the time such materials are required, and further provided that any such materials so furnished shall be in condition acceptable to Operator and shall be charged to the joint account on the same terms and conditions as are provided herein to cover the furnishing of materials by Operator.

(6) Operator's Exclusively-owned Facilities: The following rates shall apply to service rendered to the joint property by facilities owned exclusively by Operator:

(a) Water service, gas, teaming, power, and compressor service: All at rates currently prevailing in the field where the joint property is located.

(b) Automotive Equipment: Rates commensurate with cost of ownership and operation and in line with schedule

of rates adopted by the Petroleum Motor Transport Association as recommended uniform standardized charges against the joint account. Automotive charges will be based on use in actual service on or in connection with the joint property. Truck, tractor and pulling unit rates shall include wages and expenses of driver.

(c) A fair rate shall be charged for the use of drilling and cleaning-out tools and any other items of Operator's fully-owned machinery or equipment which shall be ample to cover maintenance, repairs, depreciation and the service furnished the joint property. Provided, however, that such charges shall not exceed those currently prevailing in the field where the joint property is located.

(d) Whenever requested, Operator shall inform the other lessees within the Unit Area in advance of the rates it proposes to charge.

(e) Rates shall be revised and adjusted from time to time when found to be either excessive or insufficient.

III—Disposal of Lease Equipment and Materials

(1) Materials purchased by Operator shall be credited to the joint account and included in the monthly statement of operations for the month in which the materials are removed from the joint property.

(2) Materials purchased by other lessees within the Unit Area shall be invoiced by Operator and paid for by such lessees to Operator immediately following receipt of invoice and delivery of materials. Operator shall thereupon immediately pass credit to the joint account and include the same in the monthly statement of operations for the month in which the materials were paid for by such lessees.

(3) Division of materials in kind, if made between Operator and other lessees within the Unit Area shall be in proportion to their respective interests in the joint property. Each party will thereupon be charged individually with the value of the materials received or receivable and corresponding credits will be made to the

joint account by the Operator, and, both credits shall appear in the same monthly operating statement.

(4) Sales to outsiders of major materials shall be made only with the approval of the Operating Committee as to both terms and price and where made the proceeds shall be credited by Operator to the joint account at the full amount collected from vendee. Any claims by vendee for defective materials or otherwise shall be charged back to the joint account, if and when paid by Operator.

IV—Basis of Pricing Materials Transferred from Joint Account

Materials and equipment purchased by either Operator or the lessees in the Unit Area, or divided in kind between them, unless otherwise approved by the Operating Committee, shall be valued on the following basis of condition and price: (New price as used in the following paragraphs shall have the same meaning and application as that used above in Section II: "Basis of Charges to Joint Account").

(1) New Materials: (Condition "A") being new equipment or supplies purchased or procured from the joint property but never used thereon; at 100% of current new prices.

(2) Good Secondhand Materials: (Condition "B") being good serviceable materials which are further usable without repair, at:

(a) 75% of current new prices, if materials were new when originally charged to the joint property.

(b) 75% of current new prices less depreciation consistent with their usage on and service to the joint property, if materials were originally charged to the joint property as secondhand at 75% of new prices.

(3) Other Used Materials: (Condition "C") being materials further usable for their original function only after repair and reconditioning; at 50% of current new prices.

(4) Bad Order Materials: (Condition "D") being materials not further usable for their original function but

for possible other service; at 25% of current new prices.

(5) Junk: (Condition "E") being obsolete and unserviceable materials; at prevailing junk prices in the district. Where practicable, junk should be disposed of at the joint property.

(6) Temporarily Used Materials: When the use of certain items of equipment on the joint property has been only temporary, and the time of actual use thereon does not justify the deduction of depreciation as listed in (a) and (b) of Paragraph (2) hereof, such materials will be priced on a basis that will leave a net charge against the joint account consistent with the service rendered and adequate for the time the materials were in use.

V—Inventories

Periodic inventories of the materials and equipment of the joint property, which shall include such materials and equipment as are ordinarily considered controllable by Operators of oil and gas properties, shall be taken by Operator at such times and under such conditions as may be prescribed by the Operating Committee.

EXHIBIT "B"

Part I

Tract Number	Lease Name	Legal Description	Sec.	Twp.	Range	Operator	Percentage of Interest in Unit
1	Odla-Table	S/2 SE NE	29	6N	10W	Ray Stephens, Inc.	0.18442%
2	Dome-Bo	NE SE & NE SE SE	29	6N	10W	Stephens Petroleum Co.	0.78785
3	Brown	S/2 SW NW & SW SE NW	28	6N	10W	Stephens Petroleum Co.	0.08253
4	Pell	W/2 SW	28	6N	10W	Stephens Petroleum Co.	3.51358
5	Pell	E/2 SW	28	6N	10W	Gulf Oil Corporation	2.65959
6	Pohleman	NE NW & NE SE NW & NE NW NW	33	6N	10W	Stephens Petroleum Co.	1.96799
7	Wilhite	N/2 SE less SW NE SE	28	6N	10W	Ray Stephens, Inc.	0.07288
8	Wilhite	SW NE SE	28	6N	10W	Ray Stephens, Inc.	0.01154
9	Samwill	W/2 SW SE & SE SW SE & SW SE SE	28	6N	10W	Stephens Petroleum Co.	1.18366
10	Wilhite	NE SW SE	28	6N	10W	Ray Stephens, Inc.	0.04615
11	Wilhite	NW SE SE	28	6N	10W	Ray Stephens, Inc.	0.01540
12	Wilhite	NE SE SE	28	6N	10W	Ray Stephens, Inc.	0.01749
13	Wilhite	SE SE SE	28	6N	10W	Ray Stephens, Inc.	0.02700
14	Sherritt	NE/4 less SW SW NE	33	6N	10W	Gulf Oil Corporation	13.11109
15	Beemer	NE SE less SW NE SE	33	6N	10W	Amerada Petroleum Co.	1.12313
16	Farwell	NW SW & NE SW SW & S/2 NE SW & NE SE SW	27	6N	10W	Ray Stephens, Inc.	0.07715
17	Farwell-Becker	S/2 SW SW & W/2 SE SW	27	6N	10W	Stephens Petroleum Co.	0.11581
18	Fletcher	NW/4	34	6N	10W	Phillips Petroleum Co.	5.37390
19	Plummer—W/2	NW SW & NE SW SW	34	6N	10W	Stephens Petroleum Co.	4.09025
20	Plummer—E/2	E/2 SW less SW SE SW	34	6N	10W	Stephens Petroleum Co.	6.86555
21	Griffin	S/2 NW SE	27	6N	10W	Ray Stephens, Inc.	0.00828
22	Griffin	S/2 NE SE	27	6N	10W	Ray Stephens, Inc.	0.00163
23	Loose	S/2 SE	27	6N	10W	Sunray Oil Corporation	0.31227
24	Ulrey	N/2 NE	34	6N	10W	Sunray Oil Corporation	0.43240
25	Garrison	S/2 NE	34	6N	10W	Sunray Oil Corporation	0.31484
26	Oaks	SE/4	34	6N	10W	Phillips Petroleum Co.	11.21393
27	Garn "A"	SE SE SW	26	6N	10W	Phillips Petroleum Co.	0.02277
28	Farwell	N/2 NW	35	6N	10W	Phillips Petroleum Co.	0.18958
29	Dixon	S/2 NW	35	6N	10W	Sunray Oil Corporation	0.52429
30	Sterba (below 6000')	SW/4	35	6N	10W	Gulf Oil Corporation	2.15688
31	Sterba (above 6000')	SW/4	35	6N	10W	Palmer Oil Corporation	5.51614
32	Margaret	N/2 NW less SW NW NW	2	5N	10W	Phillips Petroleum Co.	3.87549
33	Holland	NE SE NW	2	5N	10W	Gulf Oil Corporation	0.06049
34	Melton	NW SW SE & SE SW SE & NW SE SE & SE SE SE	26	6N	10W	Ray Stephens, Inc.	0.02614
35	Melton No. 2	NE SW SE	26	6N	10W	Ray Stephens, Inc.	0.00198

The lower portion of this Exhibit appears in the frame immediately below.

APPENDIX "D"

OIL AND GAS LEASE OWNED BY THE PALMER OIL CORPORATION, WITH ROYALTY RIGHTS OWNED BY PAUL STERBA AND PAUL STERBA, JR.

Filed for record Feb. 26, 1936 at 11:00 A. M.
R. L. Goodfellow County Clerk (Seal)

Oil & Gas Lease

Agreement, made and entered into the 12th day of February, 1936, by and between Paul Sterba and wife, Gertrude K. Sterba, and Helen Catherine Jackson, nee Sterba, and husband Clifford Jackson, of Kay County & Canadian County, Oklahoma, hereinafter called lessor (whether one or more) and Chris Pearson, hereinafter called lessee:

Witnesseth: That the said lessor, for and in consideration of One & No/Dollars, cash in hand paid, the receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on part of lessee to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said lessee for the sole and only purpose of mining and operating for oil and gas and of laying of pipe lines, and of building tanks, powers, stations and structures thereon to produce, save and take care of said products, all that certain tract of land situate in the county of Caddo, State of Oklahoma, described as follows, to-wit:

The Southwest Quarter, of Section 35, Township 6 N, Range 10 W, and containing 160 acres, more or less.

It is agreed that this lease shall remain in force for a term of five years from this date, and as long thereafter as oil or gas or either of them is produced from said land by lessee.

In consideration of the premises the said lessee covenants and agrees:

1st. To deliver to the credit of lessor, free of cost, in the pipe line to which lessee may connect wells on said land, the equal one-eighth part of all oil produced and saved from the leased premises.

2nd. To pay lessor one-eighth (⅛) of the gross proceeds each year, payable quarterly for the gas from each well where gas only is found, while the same is being used off the premises and if used in the manufacture of gasoline a royalty of one-eighth (⅛) payable monthly at the prevailing market rate for gas; and lessor to have gas free of cost from any such well for all stoves and all inside lights in the principle dwelling on said land during the same time, by making lessor's own connections with the well at lessor's own risk and expense.

3rd. To pay lessor for gas produced from any oil well and used off the premises or in the manufacture of gasoline or any other product a royalty of one-eighth (⅛) of the proceeds, at the mouth of the well, payable monthly at the prevailing market rate.

If no well be commenced on said land on or before the 12th day of February, 1937, this lease shall terminate as to both parties, unless the lessee shall on or before that date pay or tender to the lessor or to the lessors credit in the The Security Bank of Ponca City, Okla., or its successors, which shall continue as the depository regardless of changes in the ownership of said land, the sum of One hundred sixty & No/100 Dollars which shall operate as a rental and cover the privilege of deferring the commencement of a well for twelve months from said date. The payment herein referred to may be made in currency, draft or check at the option of the lessee; and the depositing of such currency, draft or check in any post office, with sufficient postage and properly addressed to the lessor, or said bank, on or before said last mentioned date, shall be deemed payment as herein provided. In like manner and upon like payments or tenders, the commencement of a well may be further deferred for like periods of the same number of months successively.

And it is understood and agreed that the consideration first recited herein, the down payment, covers, not only the privilege granted to the date when said first rental is payable as aforesaid, but also the lessee's option of extending that period as aforesaid, and any and all other rights conferred.

Should the first well drilled on the above described land be a dry hole, then and in that event, if a second well is not commenced on said land within twelve months from the expiration of the last rental period for which rental has been paid, this lease shall terminate as to both parties, unless the lessee on or before the expiration of said twelve months shall resume the payment of rentals, in the same amount and in the same manner as hereinbefore provided. And it is agreed that upon the resumption of the payment of rentals as above provided, that the last preceding paragraph hereof governing the payment of rentals and the effect thereof, shall continue in force just as though there had been no interruption in the rental payments, and if the lessee shall commence to drill a well within the terms of this lease or any extension thereof, the lessee shall have the right to drill such well to completion with reasonable diligence and dispatch, and if oil or gas, or either of them, be found in paying quantities, this lease shall continue and be in force with like effect as if such well had been completed within the ferm of years first mentioned.

If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided for shall be paid the said lessor only in the proportion which lessor's interest bears to the whole and undivided fee.

Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for lessee's operations thereon, except water from the wells of lessor.

When requested by lessor lessee shall bury lessee's pipe lines below plow depth.

No well shall be drilled nearer than 200 feet to the house or barn now on said premises without written consent of lessor.

Lessee shall pay for damages caused by lessee's operations to growing crops on said land.

Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

If the estate of either party hereto is assigned and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignments of rental or royalties shall be binding on the lessee until after the lessee has been furnished with a written transfer or assignment or a true copy thereof and it is hereby agreed that in the event this lease shall be assigned as to a part or as to parts of the above described lands and the assignee or assignees of such part or parts shall fail or make default in the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease in so far as it covers a part or parts of said lands, upon which the said lessee or any assignee thereof shall make due payment of said rental, and this lease shall never be forfeited for non-payment of any rental due until after at least ten days written notice by registered mail or in person shall have been given the lessee.

Lessor hereby warrants and agrees to defend the title to the lands herein described and agrees that the lessee shall have the right at any time to redeem for lessor, by payment, any mortgages, taxes or other liens on the above described lands, in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof, and the undersigned, lessors, for themselves and their heirs, successors, and assigns, hereby surrender and release all right of dower and homestead in the premises described herein, insofar as said right of dower and homestead may in any way affect the purposes for which this lease is made as recited herein.

In Testimony Whereof We Sign, this the 12th day of February, 1936.

HELEN CATHERINE JACKSON (s)
CLIFFORD JACKSON (s)
PAUL STERBA (s)
GERTRUDE K. STERBA (s)

STATE OF OKLAHOMA,
County of Canadian, SS:

Be it remembered, That on this 12th day of February A. D. 1936, before me, a Notary Public in and for said County and State, personally appeared Helen Catherine Jackson, nee Sterba, and Clifford Jackson, her husband, to me known to be the identical persons described in and who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my official signature and affixed my notarial seal, the day and year first above written.

(SEAL) H. C. KIMNER, *Notary Public.*

My commission expires January 2nd, 1938.

STATE OF OKLAHOMA,
County of Kay, SS:

Before me, the undersigned, a Notary Public within and for said County and State, on this 13 day of February, 1936, personally appeared Paul Sterba and wife, Gertrude K. Sterba, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

In testimony whereof I have hereunto set my hand and official seal the day and year last above written.

(SEAL) J. R. MEET, *Notary Public.*

My commission expires Feb. 14, 1936.

APPENDIX "E"

EXHIBIT 35

12-1-1938 Jacob Roessler Lease No. 29,873 RGL.W

Assignment

This Assignment, made in duplicate, this 6th day of December, 1938, between Gulf Oil Corporation, a Pennsylvania corporation, with offices at Tulsa, Oklahoma, hereinafter referred to as "Gulf, first party, and The Palmer Oil Corporation, of Wichita, Kansas, second party," hereinafter called "Palmer",

Witnesseth That

Whereas, Gulf is the owner and holder of an oil and gas mining lease dated February 12, 1936, executed by Paul Sterba and wife, Gertrude K. Sterba, and Helen Catherine Jackson, nee Sterba, and husband, Clifford Jackson, as lessors, to Chris Pearson, as lessee, covering the Southwest quarter of Section 35, Township 6 North, Range 10 West, Caddo County, Oklahoma, filed for record in the office of the County Clerk of Caddo County, Oklahoma on February 26, 1936 at eleven o'clock A. M. and duly recorded in Book 75 at page 316; and,

Whereas, on the 6th day of September, 1938 a contract was entered into between Gulf Oil Corporation as first party and The Palmer Oil Corporation as second party by the terms of which Gulf was to assign the lease to Palmer, hereinabove referred to, to the depth of 6,000 feet, retaining and reserving the oil and gas mining lease as to all oil, gas and other minerals below the depth of 6,000 feet, together with an overriding royalty; and,

Whereas, Palmer has complied with the contract in so far as to entitle it to an assignment of the lease in accordance with the terms of the contract;

Now, therefore, in consideration of the premises, Gulf hereby sells, assigns, transfers and sets over to Palmer, without covenants of warranty, all of its right, title and

interest in and to the above described lease to the depth of 6,000 feet, retaining the lease as to the oil, gas and casing- [fol. 228] head gas, together with all the rights, privileges and appurtenances thereunto belonging, below the depth of 6,000 feet.

To have and to hold the same, subject to all the covenants, conditions and provisions in said lease contained.

Gulf hereby reserves and retains the lease as to the oil, gas and casinghead gas below the depth of 6,000 feet, together with an overriding royalty of 1/16th of the 7/8ths working interest in the oil produced from the leased premises when the total daily production from the leased premises is fifty (50) barrels or less, per day, and 1/8th of the 7/8ths working interest in the oil produced saved and marketed from the premises when the total daily production from the leased premises exceeds fifty (50) barrels per day, also reserving and retaining an overriding royalty of 1/8th of the 7/8ths working interest in the gas and casinghead gas produced, saved and marketed or taken off the premises, which overriding royalty shall be paid in the following manner, to-wit:

Palmer agrees to run the oil produced, saved and marketed from the premises to the pipe line, or pipe lines, to which it may connect the well, or wells, under division orders placing to the credit of Gulf 1/16th of the 7/8ths working interest in the oil produced, saved and marketed from the premises, when the total gross oil produced from the leased premises is fifty (50) barrels, or less, per day, and 1/8th of the 7/8ths working interest in the oil produced, saved and marketed from the premises during the time the total gross oil produced, saved and marketed from the premises exceeds fifty (50) barrels per day, and to pay Gulf 1/8th of the proceeds of the 7/8ths working interest in the gas and casinghead gas produced, saved and marketed from the premises, payment to be made on the 20th day of each month for the gas and casinghead gas produced and sold from the premises, or used off the premises, during the preceding month. The overriding

royalty hereinabove shall be in addition to the royalty provided in the lease and payable to the lessors or their assigns.

The daily production shall be ascertained and determined, for the purposes of this contract, by taking the gross pipe line runs for the month and dividing into the same the number of days in such month, and the quotient shall be considered the total daily production from the leased premises for such month. If the test well comes into production [fol. 229] after the first of any month, the daily production for such month shall be ascertained and determined by taking the pipe line runs for the number of days the oil is run for such month and dividing into the same the number of such days, and the quotient shall be the daily production for such month for such portion of the month.

8. Palmer agrees to furnish Gulf copies of daily run tickets, to be mailed to Gulf Oil Corporation, P. O. Box 661, Tulsa, Oklahoma, once each week, enclosing the daily run tickets for the preceding week, and, at the close of the month and as soon as obtainable, production tickets for the entire month. Palmer further agrees to furnish Gulf copies of all tank tables.

9. Palmer promises and agrees to produce and market each month the total allowable production for such month and if for any reason Palmer fails, neglects or refuses to produce and market such allowable, Palmer shall promptly advise Gulf, in writing, furnishing in detail the reasons for not producing and running the allowable for such month.

This Assignment is made subject to contract of September 6th, 1938 between Gulf Oil Corporation, first party, and The Palmer Oil Corporation, second party, which contract is hereby referred to and made a part hereof, the same as if herein copied in full.

It is further agreed that any assignment by Palmer shall by reference incorporate the contract of September 6, 1938 as a part thereof and specifically provide for the payment of the overriding royalty to Gulf.

Dated the day and date first above written.

Gulf Oil Corporation, By Rush Greenslade, Vice-President. The Palmer Oil Corporation, By Tom Palmer, President.

Attest: D. B. Catterlin, Assistant Secretary.
Attest: Otto H. Schnepel, Secretary.

[fol. 230] STATE OF OKLAHOMA,
County of Tulsa, ss.:

Before me, the undersigned, a Notary Public in and for said County and State, on this 15th day of December, 1938, personally appeared Rush Greenslade, to me known to be the identical person who subscribed the name of the Maker thereof, Gulf Oil Corporation, to the foregoing instrument as its Vice-President, and acknowledged to me that he executed it as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Witness my hand and seal, the day and year last above written.

E. B. Benton, Notary Public.

My commission expires Dec. 17, 1938.

STATE OF KANSAS,
County of Sedgwick, ss.:

Before me, the undersigned, a Notary Public in and for said County and State, on this 6th day of December, 1938, personally appeared Tom Palmer, to me known to be the identical person who subscribed the name of the Maker thereof, The Palmer Oil Corporation, to the foregoing instrument as its President, and acknowledged to me that he executed it as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Witness my hand and seal, the day and year last above written.

Jewell Thompson, Notary Public.

My Commission expires March 3, 1941.

APPENDIX "F"

Exhibit 34

This Agreement made in duplicate this 6th day of September, 1938, between Gulf Oil Corporation, a Pennsylvania corporation, with offices at Tulsa, Oklahoma, first party, hereinafter called "Gulf", and The Palmer Oil Corporation, of Wichita, Kansas, second party, hereinafter called "Palmer",

Witnesseth, that

Whereas, Gulf is the owner and holder of an oil and gas mining lease dated February 12, 1936, executed by Paul Sterba and Gertrude K. Sterba, his wife, and Helen Catherine Jackson, nee Sterba, and Clifford Jackson, her husband, as lessors, to Chris Pearson, as lessee, covering the

> Southwest Quarter (SW¼) of Section 35, Township 6 North, Range 10 West, Caddo County, Oklahoma,

and filed for record in the office of the County Clerk of Caddo County, Oklahoma, February 26, 1936 at 11:00 o'clock A. M., and recorded in book 75 at page 316; and,

Whereas, Gulf has agreed to assign the lease without covenants of warranty to Palmer and the oil, gas and other minerals above the depth of 6000 feet, retaining an overriding royalty, in consideration of the covenants and promises and agreements hereinafter contained:

Now, therefore, in consideration of the premises and the mutual covenants and agreements hereinafter set out, it is agreed as follows, to-wit:

1. Palmer agrees within thirty (30) days from the date of the execution of this contract to commence drilling operations for oil and gas, or either of them, in the center of the

> Northeast Quarter (NE¼) of the Northeast Quarter (NE¼) of the Southwest Quarter (SW¼) of Section 35, Township 6 North, Range 10 West, Caddo County, Oklahoma,

and with diligence and dispatch and at its sole cost and expense drill said well to a total depth of six thousand (6000) feet unless oil and gas, or either of them, or igneous rock or other impenetrable formation is encountered at a lesser depth.

2. During drilling operations, Palmer shall at all times afford Gulf free access to said well and the records thereof, and once each week shall forward to W. R. Thawley, P. O. Box 661, Tulsa, Oklahoma, written report showing all formations encountered, including the depth thereof, and [fol. 182] upon request and in receptacles furnished by Gulf, send to W. R. Thawley samples or cuttings of formations and waters penetrated. In event said well shall be completed to a dry hole, Palmer shall forthwith measure the depth of said well by running a steel measuring line therein, and shall notify Gulf of its intention to measure said well in time for Gulf to have a representative at the well to witness the measurement thereof. Upon completion of said well Palmer shall furnish Gulf with complete certified log thereof and samples and cuttings of formations saved in the course of drilling, and such other information disclosed by said drilling as may be demanded by Gulf.

3. In event Palmer shall fail to commence and complete the aforesaid well, or cease drilling operations on the same for a period of more than ten (10) days, unless such delay is due to the Act of God or the public enemy, then all rights of Palmer under this agreement shall forthwith terminate.

4. If the aforesaid well shall be drilled and shall be found dry, Palmer shall promptly plug the same at its sole cost and expense and retain all salvage from said well as his own, said work to be performed in compliance with the laws of the State of Oklahoma and the Rules and Regulations of any regulatory body having jurisdiction in the State of Oklahoma.

5. Before plugging any well and abandoning the same, Palmer shall give notice of such intention to Gulf at least

ten (10) days before the date on which said well shall be plugged and abandoned, during which ten (10) days Gulf shall have the right, but shall not be obligated so to do, to take over said hole by paying Palmer the cost of drilling such hole, plus the cost of the equipment in the well as reflected by the books and records of Palmer, and thereupon such hole and equipment therein shall become the property of Gulf, it being understood and agreed that in event Gulf takes over the hole, Palmer shall deliver the hole to Gulf free, clear and discharged of all encumbrances, and in event there are any debts or claims unpaid, Gulf shall have the power and authority to pay such indebtedenss out of the purchase price of such hole, accounting to Palmer for the balance due, if any.

6. Palmer agrees to comply with the Workmen's Compensation Laws of the State of Okahoma and furnish satisfactory evidence of such compliance, and further agrees to save harmless and indemnify Gulf from and on account of all liabilities of every kind or character either to person or [fol. 183] property incurred during the performance of this agreement.

7. Gulf further promises and agrees, upon full compliance with all the covenants, conditions and agreements herein contained, and completion of the test well to the depth of six thousand (6000) feet, unless oil and gas, or either of them, are found in commercial quantities at a lesser depth, or igneous rock or other impenetrable formation is encountered at a lesser depth, and upon satisfactory proof that all debts have been paid, it will assign the oil and gas mining lease hereinabove described, without covenants of warranty, insofar as it covers the oil, gas and other minerals above the depth of six thousand (6000) feet, retaining and reserving the oil and gas and other minerals below the depth of six thousand (6000) feet, and also retaining an overriding royalty of 1/16th of the 7/8ths working interest in the oil produced when the total daily production from the leased premises is fifty (50) barrels or less per day, and 1/8th of the 7/8ths working

interest in the oil produced saved and marketed from the premises when the total daily gross oil produced from the leased premises exceeds fifty (50) barrels per day; also reserving and retaining an overriding royalty of 1/8th of the 7/8ths working interest in the gas and casinghead gas produced, saved and marketed or used off the premises, which overriding royalty is to be paid in the following manner, to-wit:

Palmer agrees to run the oil produced, saved and marketed from the premises to the pipe line or pipe lines to which it may connect the well or wells under division orders placing to the credit of the Gulf 1/16th of the 7/8ths working interest in the oil produced, saved and marketed from the premises, when the total gross oil produced from the leased premises is fifty (50) barrels or less per day, and 1/8th of the 7/8ths working interest in the oil produced, saved and marketed from the premises during the time the total gross oil produced, saved and marketed from the premises exceeds fifty (50) barrels per day, and to pay Gulf 1/8th of the proceeds of the 7/8ths working interest in the gas and casinghead gas produced, saved and marketed from the premises, payment to be made on the 20th day of each month for the gas and casinghead gas produced and sold from the premises or used off the premises during the preceding month. The overriding royalty hereinabove shall be in addition to the royalty provided in the lease and payable to the lessor or their assigns.,

[fol. 184] The daily production shall be ascertained and determined, for the purposes of this contract, by taking the gross pipe line runs for the month and dividing into the same the number of days in such month, and the quotient shall be considered the total daily production from the leased premises for such month. If the test well comes into production after the first of any month, the daily production for such month shall be ascertained and determined by taking the pipe line runs for the number of days the oil is run for such month and dividing into the same the number of such days, and the quotient shall be

the daily production for such month for such portion of the month.

8. Palmer agrees to furnish Gulf copies of daily run tickets, to be mailed to Gulf Oil Corporation, P. O. Box 661, Tulsa, Oklahoma, once each week, enclosing the daily run tickets for the preceding weeks, and, at the close of the month and as soon as obtainable, production tickets for the entire month. Palmer further agrees to furnish Gulf copies of all tank tables.

9. Palmer promises and agrees to produce and market each month the total allowable production for such month and if for any reason Palmer fails, neglects or refuses to produce and market such allowable, Palmer shall promptly advise Gulf in writing, furnishing in detail the reasons for not producing and running the allowable for such month.

10. After the execution of the foregoing assignment, Palmer agrees to perform all of the covenants, express and implied, in the lease insofar as oil and gas development or offsets of oil and gas wells are concerned, and to save harmless Gulf from any claims on the part of the lessors or any of them, or royalty owners on account of any alleged failure to perform any such obligation, and further agrees to defend any suits that may be filed against Gulf on account of such failure, and to pay any judgment that may be obtained against Gulf, and in event Palmer shall fail to offset any paying oil or gas well, Gulf shall have the right and option, but shall not be obligated so to do, it being purely optional with it, to drill such well if Palmer shall fail to commence actual operations on the land for the drilling of such well or wells within forty-five (45) days after demand in writing by Gulf to Palmer, and shall thereafter diligently continue the drilling of such well, and in such case, if Gulf drills such well or wells, it shall have the sole right in such leases as to each well drilled, including a plot [fol. 185] of ground in square form containing ten (10) acres, the center of which shall be the well.

36	Melton No. 1	SW SW SE	26	6N	10W	Ray Stephens, Inc.	0.01211
37	Melton No. 4	SW SE SE	26	6N	10W	Ray Stephens, Inc.	0.01693
38	Sames	NE/4	35	6N	10W	Magnolia Petroleum Co.	0.57283
39	Cement-Henley	N/2 SE & N/2 SW SE	35	6N	10W	Magnolia Petroleum Co.	1.59617
40	Hays	SE SE	35	6N	10W	Anderson-Prichard Oil Corp.	0.58977
41	Pierson	S/2 SW SE	35	6N	10W	Stephens Petroleum Co.	1.47267
42	Hartshorn	N/2 NE	2	5N	10W	Phillips Petroleum Co.	8.23583
43	Hartshorn	S/2 NE less SW SW NE	2	5N	10W	Amerada Petroleum Corp.	4.03085
44	Pickard Edwards	SW SW SW	25	6N	10W	Magnolia Petroleum Co.	0.00422
45	Niles	NW NW & S/2 NW & SW NE NW	36	6N	10W	Magnolia Petroleum Co.	0.36728
46	Medrano	SW/4	36	6N	10W	Magnolia Petroleum Co.	0.59865
47	I. Edwards	NW NW	1	5N	10W	Magnolia Petroleum Co.	2.36552
48	L. L. Edwards	E/2 NW	1	5N	10W	Magnolia Petroleum Co.	1.86102
49	Edwards	SW NW	1	5N	10W	Amerada Petroleum Co.	3.54720
50	Wood	NW NW SW	1	5N	10W	Amerada Petroleum Co.	0.18412
51	Caddo-Rowe	SW SW NE	36	6N	10W	Magnolia Petroleum Co.	0.00495
52	Lindsay	S/2 SE & NW SE & SW NE SE	36	6N	10W	Magnolia Petroleum Co.	0.31433
53	Davis	NW NE	1	5N	10W	Magnolia Petroleum Co.	0.34024
54	Davis	W/2 NE NE	1	5N	10W	Potter	0.06642
55	Davis	E/2 NE NE	1	5N	10	F. L. Rookstool	0.03249
56	Walker	SW NE	1	5N	10W	Anderson-Prichard Oil Corp.	1.55533
57	Walker	SE NE	1	5N	10W	Stephens Petroleum Co.	1.18658
58	Pickard	N/2 NE SE & SE NE SE & NE NW SE	1	5N	10W	Anderson-Prichard Oil Corp.	1.09412
59	Gregory	SW SW SW	31	6N	9W	Magnolia Petroleum Co.	0.00329
60	Gingrich	NW NW	6	5N	9W	Magnolia Petroleum Co.	0.02882
61	Gingrich	SW NE NW	6	5N	9W	Stanolind Oil & Gas Co.	0.00133
62	Davis	SW NW & S/2 SE NW & NW SE NW	6	5N	9W	Anderson-Prichard Oil Corp.	0.40951
63	Davis	NE SE NW	6	5N	9W	Lloyd Noble	0.00073
64	Prentice "A"	N/2 SW	6	5N	9W	Anderson-Prichard Oil Corp.	2.58742
65	Prentice "B"	N/2 SE SW & NE SW SW	6	5N	9W	Anderson-Prichard Oil Corp.	0.52078
66	Wray	SW SW NE	6	5N	9W	Anderson-Prichard Oil Corp.	0.00065
67	McClaren "A"	NW SE	6	5N	9W	Anderson-Prichard Oil Corp.	0.06316
68	McClaren "B"	SW NE SE	6	5N	9W	Anderson-Prichard Oil Corp.	0.01446
69	McClaren	N/2 SW SE	6	5N	9W	Amerada Petroleum Co.	0.13116
70	McClaren	NW SE SE	6	5N	9W	Amerada Petroleum Co.	0.02458
71	Garn "B"	S/2 NW SW & SW SW & W/2 SE SW & NE SE SW	26	6N	10W	Phillips Petroleum Co.	0.04096
72	Farwell #2	SE SE SW & NW SW SW	27	6N	10W	Ray Stephens, Inc.	0.13935
TOTAL							100.00000%

NOTE: All leases are subject to the adjustment outlined in Exhibit "B"—Part II.

11. It is further agreed that if at any time Palmer desires to abandon any oil or gas well drilled by it on the leased premises or desires to abandon the entire leased premises, Gulf shall be given (30) days' notice of such intention and during such 30 days Gulf shall have the option to take over such well or wells or Palmer's interest in the entire leased premises by paying Palmer the salvage value of the equipment in the well or wells, and/or the leased premises and, upon Gulf exercising such option, Palmer shall assign to Gulf its interest in the leased premises as to the well or wells taken over or the entire leased premises, as the case may be, free, clear and discharged of all liens or encumbrances of whatsoever kind or nature. In event Gulf does not elect to take over any well or wells Palmer has drilled on the leased premises and/or the entire leased premises, Gulf shall be entitled, if it so demands, to a re-assignment of the lease free, clear and discharged of all liens and encumbrances and Palmer shall be entitles to the salvage value of the equipment placed thereon; Provided, in event Gulf shall take over a well or wells as herein provided and not the entire leased premises, the re-assignment shall extend only to a tract of land surrounding each well containing ten (10) acres in a square form, the center of which shall be the well taken over.

12. It is further agreed between the parties that Palmer will at all times keep said lease free, clear and discharged of all liens, charges or encumbrances of whatsoever kind or character and protect and save harmless and indemnify Gulf on account of any loss, damage, or liability it may suffer or sustain, or become subject to, on account of the operation of the premises by Palmer.

13. It is further agreed that Palmer shall not assign or release the lease, or any interest therein, without procuring the consent of Gulf in writing.

14. This contract is entered into in accordance with and shall at all times be subject to the laws of the State of Oklahoma, and the rules and regulations of the Corpora-

tion Commission, the laws of the United States, and the rules and regulatory orders of any Board, Federal or State, having jurisdiction in the premises.

[fol. 186] 15. All notices necessary to be given under the terms of this agreement shall be in writing, by registered mail, addressed to the Gulf Oil Corporation, P. O. Box 661, Tulsa, Oklahoma, and The Palmer Oil Corporation, Wichita, Kansas.

Witness the signatures of the parties hereto the day and year first above written.

Gulf Oil Corporation, by Rush Greenslade, Vice-President.

Attest: D. B. Catterlin, Assistant Secretary.

The Palmer Oil Corporation, by Tom Palmer, President.

Attest: Otto H. Schnepel, Secretary.

[fol. 187] STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, the undersigned notary public in and for said county and state, on this 7th day of September, 1938, personally appeared Rush Greenslade, to me known to be the identical person who subscribed the name of the Gulf Oil Corporation, a corporation, the maker thereof, to the within and foregoing instrument as its Vice President, and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Witness my hand and seal the day and year last above written.

E. G. Grear, Notary Public.

My commission expires Dec. 31, 1941.

STATE OF KANSAS,
County of Sedgwick, ss:

Before me the undersigned notary public in and for said county and state, on this 6th day of September, 1938, personally appeared Tom Palmer, to me known to be the identical person who subscribed the name of The Palmer Oil Corporation, a corporation, the maker thereof, to the within and foregoing instrument as its President, and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Witness my hand and seal the day and year last above written.

Jewell Thompson, Notary Public,

My commission expires March 3, 1941.